

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, AFL-CIO, LOCAL 198,
and WILLIAM DiLORENZO, on behalf of
himself and all others similarly situated,

Plaintiffs,

vs.

CITY OF ATLANTIC CITY, NEW
JERSEY, CHARLES RICHMAN,
COMMISSIONER OF NEW JERSEY
DEPARTMENT OF COMMUNITY
SERVICES, sued in his official capacity,
TIMOTHY CUNNINGHAM, DIRECTOR
OF NEW JERSEY DEPARTMENT OF
COMMUNITY SERVICES, DIVISION OF
LOCAL GOVERNMENT SERVICES, sued
in his official capacity, and JEFFREY
CHIESA, DESIGNEE OF THE DIRECTOR
OF NEW JERSEY DEPARTMENT OF
COMMUNITY SERVICES, DIVISION OF
LOCAL GOVERNMENT SERVICES, sued
in his official capacity,

Defendants.

Case No. _____

Electronically Filed

**NOTICE OF REMOVAL
TO FEDERAL COURT**

[Previously pending in the Superior
Court of New Jersey, Law Division,
Atlantic County, ATL-L-208-17]

TO: CHIEF JUDGE AND JUDGES OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ON NOTICE TO:

Clerk of the Court, Law Division
Superior Court of New Jersey, Atlantic County
1201 Bacharach Blvd.
Atlantic City, New Jersey 08401

Honorable Julio L. Mendez, A.J.S.C.
Superior Court of New Jersey, Atlantic County
Atlantic County Civil Courts Bldg.
1201 Bacharach Blvd.
Atlantic City, New Jersey 08401

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Attorneys for Plaintiffs
International Association of Fire Fighters, AFL-CIO, Local 198 and
William DiLorenzo

PLEASE TAKE NOTICE that Defendants City of Atlantic City, New Jersey (“Atlantic City”), Charles Richman, Timothy Cunningham, and Jeffrey Chiesa (collectively, “Defendants”) hereby give notice of the removal of the above-captioned action from the Superior Court of New Jersey, Law Division, Atlantic County, to the United States District Court for the District of New Jersey, pursuant to 28 U.S.C. § 1441 and § 1446, as amended, and in accordance with 28 U.S.C. §1331.

In support of this Notice of Removal, Defendants state:

1. Plaintiffs International Association of Fire Fighters, AFL-CIO, Local 198 (“IAFF Local 198”) and William DiLorenzo (collectively, “Plaintiffs”) commenced this action on or about January 30, 2017 by transmitting a copy of Plaintiffs’ Verified Complaint, Order to Show Cause with Temporary Restraints, Order to Show Cause with Preliminary Injunction, Brief in Support of Request for Injunctive Relief, and accompanying certifications via electronic mail to the Honorable Julio L. Mendez, A.J.S.C., Superior Court of New Jersey, Atlantic County, and simultaneously filing a copy of the same with the Clerk of the Court via Federal Express (the “State Court Action”).

2. Defendants were served with a copy of the Complaint and Order to Show Cause on January 30, 2017.

3. Plaintiffs' Complaint asserts claims against Defendants in connection with Defendants' notice of their intent to modify, in accordance with the statutory powers vested in the Municipal Stabilization and Recovery Act ("M.S.R.A."), codified at N.J.S.A. 52:27BBBB-1, *et seq.*, the collective negotiations agreement between the Atlantic City and the IAFF Local 198.

4. Defendants submit that each of the claims asserted by Plaintiffs are frivolous, but because Plaintiffs' claims arise under and implicate the Constitution of the United States, Defendants hereby seek to remove the State Court Action to the United States District Court for the District of New Jersey.

5. Defendants further submit that Plaintiffs' Order to Show Cause and request for temporary restraints are moot. As set forth in Defendants' letter of January 31, 2017, attached hereto as Exhibit A, which was sent to both Plaintiffs' counsel and the State Court, Defendants have agreed not to implement any of the actions that are the subject of Plaintiffs' Complaint and Order to Show Cause and to maintain the status quo until February, 19, 2017.

6. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Defendants and/or filed in the State Court Action are attached to this Notice as Exhibit B.

7. Under New Jersey civil practice rules, Defendants have until March 6, 2017 to answer, move to dismiss, or otherwise respond to the Complaint. As a result, no Defendant's time to respond to the Complaint has expired. Defendants expressly reserve their rights under Fed. R. Civ. P. 81 to hereafter answer or present other defenses or objections in accordance with the Federal Rules of Civil Procedure.

8. Pursuant to 28 U.S.C. § 1446(b), a Notice of Removal must be filed within 30 days of service of the Complaint. Because Defendants were served January 30, 2017 and this Notice of Removal is being filed January 31, 2017, it is timely.

9. Concurrent with the filing of this Notice, and in accordance with 28 U.S.C. § 1446(d), Defendants are serving this Notice on Plaintiffs' counsel and filing a copy of the Notice with the Clerk of the Superior Court of New Jersey, Law Division, Atlantic County, along with a Notice of Notice of Removal, in the form attached as Exhibit C.

10. Each of the Defendants join-in and consent to the removal of this action.

11. The United States District Court for the District of New Jersey includes Atlantic County, where the State Court Action is now pending. Venue is therefore proper for this Notice of Removal under 28 U.S.C. §§ 110 and 1446(a).

Removal Is Proper Because This Court Has Original Jurisdiction

12. Pursuant to 28 U.S.C. § 1441, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

13. Because this Court has original subject matter jurisdiction over this action, Defendant may remove this action pursuant to 28 U.S.C. §§ 1441(a) and 1446.

14. The Complaint asserts thirteen separate causes of action against Defendants. Among Plaintiffs' causes of action are claims for purported violation of the Contract Clause of the United States Constitution (Count XI) as well as the First and Fourteenth Amendments to the United States Constitution (Count XII). As a result of the foregoing, this action "aris[es] under

the Constitution, laws, or treaties of the United States,” and this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331.

15. This Court also has original jurisdiction over all remaining state law claims pursuant to 28 U.S.C. § 1367 because such claims are so related to Plaintiffs’ federal law claims that they form a part of the same case or controversy.

16. No admission of fact, law or liability is intended by the filing of this Notice of Removal. Defendants hereby preserve any and all defenses, objections and/or motions available under state and/or federal law.

CONCLUSION AND PRAYER

WHEREFORE, pursuant to 28 U.S.C. §§ 1441 and 1446, as amended, and in accordance with 28 U.S.C. § 1331 and 1367, Defendants respectfully remove the above-captioned civil action, which is currently pending in the Superior Court of New Jersey, Atlantic County, to the United States District Court for the District of New Jersey, and request that all further proceedings be conducted in this Court as provided by law.

Dated: January 31, 2017

/s/ Ronald L. Israel

Ronald L. Israel
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Counsel for Defendants
City of Atlantic City, New Jersey, Charles
Richman, Timothy Cunningham, and Jeffrey
Chiesa