**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**
**TRIAL DIVISION - CIVIL**

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| JOSEPH FARRELL and PATRICK VIOLA, individually and on behalf of others similarly situated, Plaintiffs, | : | OCTOBER TERM, 2023 |
| | : | NO. 02999 |
| v. | : | CLASS ACTION |
| PHILADELPHIA FIREFIGHTERS' AND PARAMEDICS' UNION, et al., | : | Control No. 24080137 |
| Defendants. | : | |



**ORDER**

**AND NOW**, this 1st day of August, 2025, upon consideration of plaintiff's Motion for Class Certification and the responses thereto, after a hearing on the Motion, and in accord with the Findings of Fact and Conclusions of Law and Opinion issued simultaneously, it is hereby **ORDERED and DECREED** as follows:

1. The Motion is **DENIED**;
2. The claims of all plaintiffs except Joseph Farrell are severed and dismissed without prejudice to refile separate claims under separate captions;
3. The claims of Jospeh Farrell shall maintain the current caption (October Term, 2023, No. 02999);
4. The statute of limitations is hereby **TOLLED** back to the original filing date for a period of sixty (60) days from the date of entry of this Order to allow plaintiff Patrick Viola time to refile any of his dismissed claims. Nothing in this provision, however, will be deemed to waive a statute of limitation defense in a refiled action where the matter would have been time-barred at its original filing on October 27, 2023.



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5. This case, which is now comprised of Joseph Farrell's claims only, is transferred to the court's Arbitration Program for all further proceedings.

**BY THE COURT:**

**PAULA A. PATRICK, S.J.**

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| PHILADELPHIA FIREFIGHTERS' AND PARAMEDICS' UNION, et al., Defendants. | : | Control No. 24080137 |

**FINDINGS OF FACT AND**
**CONCLUSIONS OF LAW**

1. The numerosity requirement is met because there appear to be over 170 people who fall within the plaintiffs' proposed definition of the putative class.

2. While there appear to be some questions of law and fact common to all class members, individual questions of law and fact predominate over those common questions and will make trial of this case as a class action unmanageable.

3. The named plaintiffs' claims do not appear to be typical of the claims of the other class members because each plaintiff's and each class member's relevant knowledge, reliance, choices, and circumstances are unique.

4. Named plaintiffs and their counsel could adequately represent the class, but it is otherwise inappropriate to certify the proposed class.

5. A class action is not a fair and efficient method for adjudicating the putative class members' claims against defendants because there would be too many individual determinations to make at trial with respect to those claims, and each putative class member's potential damages may be sufficient to warrant filing an individual action.

## OPINION

In their Motion for Class Certification, plaintiffs ask the court to certify a class of at least 171 persons who are:

> former or current City of Philadelphia Fire Department employees exclusively represented by [Philadelphia Firefighters' and Paramedics' Union, International Association of Firefighters, Local 22 (the "Union")] who retired or enrolled in the City [of Philadelphia's (the "City's")] Deferred Retirement Option Plan ("DROP") from November 2019 through the present, who [had accrued but] did not sell back the maximum amount of vacation time that they could during [their last two full years of service prior to retirement or enrollment in DROP.][1]

The court will certify an action as a class action only when all of the following requirements are met:

> (1) The class is so numerous that joinder of all members is impracticable;
> (2) There are questions of law or fact common to the class;
> (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;
> (4) The representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in [Pa. R. Civ. P.] 1709; and
> (5) A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in [Pa. R. Civ. P.] 1708.[2]

"The plain language of the [above] rule indicates that failure to meet any one of the five prerequisites can be fatal to certification."[3]

"[T]he trial court [should] decide whether certification is proper based on the parties' allegations in the complaint and answer, on depositions or admissions supporting these allegations,

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[1] Amended Complaint, Dkt at 3/21/24 ("Amended Complaint"), ¶ 19; Motion for Class Certification, Dkt. at 7/31/24 ("Motion"), Proposed Order. The last two full years of each class member's service are referred to by the plaintiffs as the "Pension Years." Those years will be different for each class member. *See* Amended Complaint, ¶¶ 35, 41 (after 25 years of service with the Fire Department, Mr. Viola "enrolled in DROP on or around November of 2020"), ¶¶ 34, 42 (after 38 years of service with the Fire Department, Mr. Farrell "enrolled in DROP on or around October of 2021.")

[2] Pa. R. Civ. P. 1702.

[3] *Kern v. Lehigh Valley Hosp., Inc.*, 108 A.3d 1281, 1285, n. 4 (Pa. Super. 2015).

and any testimony offered at the class certification hearing. The court may review the substantive elements of the case only to envision the form that a trial on those issues would take."[4] The court recognizes "that class certification decisions serve as critical milestones in the tracking, management, and handling of mass claims."[5] After reviewing the substantive elements of this case and trying to envision what form trial on the issues raised by the plaintiffs would take, the court is convinced that a class action would not be a fair and efficient method to try the myriad individual issues raised by the plaintiffs' claims in this action.

**THE FACTS, CLAIMS, AND DEFENSES ALLEGED BY THE PARTIES.**

Named plaintiffs are two employees of the City of Philadelphia's (the "City's") Fire Department and members of the Philadelphia Firefighters' and Paramedics' Union, International Association of Firefighters, Local 22 (the "Union").[6] Plaintiffs allege that the Union and its officials breached the Union's duty to represent its members fairly and that the City, its supervisory Fire Department employees, and/or members of its Pension Board, actively participated, conspired, or colluded with the Union to breach that duty.[7]

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[4] *Samuel-Bassett v. Kia Motors Am., Inc.*, 613 Pa. 371, 397, 34 A.3d 1, 15–16 (2011).

[5] *Basile v. H & R Block, Inc.*, 617 Pa. 212, 223, 52 A.3d 1202, 1209 (2012).

[6] Amended Complaint, ¶ 11 (Mr. Farrell is a Captain), ¶ 13 (Mr. Viola is a Firefighter).

[7] *Id.*, ¶ ¶ 113-4. *See Koken v. Steinberg*, 825 A.2d 723, 731 (Pa. Commw. 2003) (Quoting "Section 876 of the Restatement (Second) of Torts, Persons Acting In Concert, [which] provides that one is subject to liability for harm to a third person arising from the tortious conduct of another if he a) does a tortious act in concert with the other or pursuant to a common design with him; b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself; or c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.")

The Union allegedly breached its duty to fairly represent its rank-and-file members when the Union and its officials "concealed" from its members "how selling back vacation time during an employee's last two full years of service prior to retirement or enrollment in the City's Deferred Retirement Option Plan [("DROP")] could maximize employees' pensions."[8] Instead, the Union "advised rank-and-file union and bargaining unit members not to sell back unused vacation time, claiming that doing so could end that benefit for firefighters and paramedics."[9] Plaintiffs also allege that "employees like Plaintiffs, who would have known of these increased benefits had the Union not concealed them, could have potentially increased their pension payments by as much as hundreds of dollars per month."[10] Instead, plaintiffs claim they "detrimentally relied on their Union's insistence to not sell back that time."[11]

"Plaintiffs recall that for their entire careers with the City's Fire Department, the Union has discouraged vacation sellbacks by cultivating an atmosphere of intimidation and trepidation around vacation sellbacks. In other words, Fire Department employees like plaintiffs were pressured to believe that selling back vacation time was immoral or anti-union, and when firefighters did try to sell back vacation time, they would face ridicule from Union members or officials."[12] Plaintiffs allege they "retired or enrolled in DROP without maximizing their pension benefits" because of "the Union's concealment and discouragement."[13] As a result of this alleged

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[8] Amended Complaint, ¶ 3.

[9] *Id.*, ¶ 2.

[10] *Id.*, ¶ 66.

[11] *Id.*, ¶ 69.

[12] *Id.*, ¶¶ 43-5.

[13] *Id.*, ¶¶ 117-121.

wrongful conduct, plaintiffs ask the court to "[o]rder Defendants to provide all proposed class members with an accounting of unsold vacation days during their Pension Years, and the resulting difference to their pension benefits had those days been sold back[.]"[14] Plaintiffs also request "compensatory damages" for plaintiffs' and the class members which, presumably, include the increased pension benefits that each class member would have received if s/he had sold back some or all of his/her unsold vacation days.[15]

## I. The Numerosity Requirement Is Satisfied.

> Whether the number [of potential class members] is so large as to make joinder impracticable is dependent not upon an arbitrary limit, but rather upon the circumstances surrounding each case. . . . The class representative need not plead or prove the number of class members so long as she is able to define the class with some precision and affords the court with sufficient indicia that more members exist than it would be practicable to join.[16]

More than 40 potential class members are generally considered too many to join in one action as plaintiffs with individual claims.[17] In this case, there are potentially more than 170 members of the putative class. The joinder of so many individual class members in one action as plaintiffs would clearly be impracticable, so the class as described would be sufficiently numerous. However, just because 170+ firefighters cannot all be joined in one action as plaintiffs, that does

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[14] Amended Complaint, p. 17, Prayer for Relief (d).

[15] *Id.*, Prayer for Relief (c).

[16] *Janicik v. Prudential Insurance Co. of America*, 305 Pa. Super. 120, 131-132, 451 A.2d 451, 456 (1982).

[17] *See In re Modafinil Antitrust Litig.*, 837 F.3d 238, 249–50 (3d Cir. 2016) ("While no minimum number of plaintiffs is required to maintain a suit as a class action, . . . [l]eading treatises have collected cases and recognized the general rule that a class of 20 or fewer is usually insufficiently numerous[,] a class of 41 or more is usually sufficiently numerous[,] while classes with between 21 and 40 members are given varying treatment. These midsized classes may or may not meet the numerosity requirement depending on the circumstances of each particular case.")

not mean they can or should be treated as members of a single class for purposes of litigating their individual claims against the Union and the City.

## II. There May be a Few Questions of Law and Fact Common to the Class, but Individual Questions of Law and Fact Predominate.

"[A] common issue of fact or law will generally exist if the class members' legal grievances are directly traceable to the same practice or course of conduct on the part of the class opponent. The common question of fact requirement means precisely that the facts must be substantially the same so that proof as to one claimant would be proof as to all."[18] Plaintiffs are "not required to prove that the claims of all class members [a]re identical; the existence of distinguishing individual facts is not fatal to certification."[19] However, issues of knowledge and reliance, which are components of plaintiffs' claim here, require an individualized enquiry that may destroy a finding of sufficient commonality to certify the class.[20]

In this case, plaintiffs have alleged claims against the Union for breach of the duty of fair representation, as well as against the City for aiding and abetting that breach. For the purpose of deciding the Motion for Class Certification, the court will assume the plaintiffs' claims are viable and that plaintiffs will be able to prove the facts alleged in the Amended Complaint. The court

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[18] *Sommers v. UPMC*, 185 A.3d 1065, 1076 (Pa. Super. 2018).

[19] *Samuel-Bassett*, 613 Pa. at 409, 34 A.3d at 23.

[20] *See Kern,* 108 A.3d at 1289–90 (Superior Court affirmed denial of class certification where "[t]he trial court determined that the requirement for justifiable reliance [in a fraud or UTPCPL claim] defeats Rule 1702(2)'s requirement of commonality of facts and law between prospective class members. In addition, the trial court determined that, under Rule 1702(5), class action would not be a fair and efficient method of adjudication because individual reliance would be the predominant factor over the common issues."); *Clark v. Pfizer, Inc.*, 990 A2d. 17, 27 (Pa. Super. 2010) (Court affirmed decertification of the class because "in order to establish reliance and/or causation, Appellants would have to demonstrate doctor-by-doctor that defendants' fraudulent misrepresentations or omissions during the off-label promotion caused the doctor to prescribe the medicine.")

will then review the substantive elements of the case "to envision the form that a trial on those issues would take."[21]

Plaintiffs' claim for breach of the duty of fair representation is a breach of fiduciary duty claim.[22] "To prevail on their breach of fiduciary duty claims, [plaintiffs are] required to prove the following elements: the existence of a fiduciary relationship between [p]laintiff[s] and [the Union], that [the Union] negligently or intentionally failed to act in good faith and solely for [plaintiffs'] benefit, and that [plaintiffs] suffered an injury caused by the [Union's] breach of [its] fiduciary duty."[23] In other words, for the plaintiffs to prevail on their claim for breach of the duty of fair representation, plaintiffs must prove on a class-wide basis that the Union owed its members a duty, that the duty was breached by the Union, and that the breach caused the class members harm for which damages may be awarded. While the existence of the duty may be a question common to all class members' claims, whether that duty was breached with respect to each class member,

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[21] *Samuel-Bassett*, 613 Pa. at 397, 34 A.3d at 15–16.

[22] Amended Complaint, ¶ 6 ("employees are beneficiaries of fiduciary obligations owed by the union" citing *Falsetti v. Local Union No. 2026, United Mine Workers of Am.*, 161 A.2d 882, 895 (Pa. 1960)). *See also Best v. United Steel Paper & Forestry Rubber Mfg. Energy Allied Indus. & Serv. Workers Int'l Union*, 299 A.3d 1043, 1054 (Pa. Commw. 2023), *app. den.*, 312 A.3d 908 (Pa. 2024) ("The duty of fair representation requires unions to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. Unions have a fiduciary obligation to represent all of their members fairly and to protect the members' rights. A union's actions can be considered arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational."); *Case v. Hazelton Area Educ. Support Pers. Ass'n (PSEA/NEA)*, 928 A.2d 1154, 1158 (Pa. Commw. Ct. 2007) ("It is well established that a union acts as a trustee for the rights of its members and employees in the bargaining unit. In return, the members and employees are beneficiaries of a fiduciary obligation owed to them by the union. A union breaches the duty of fair representation when it acts in bad faith toward its members, and violates the fiduciary trust created from the principal-agent relationship.").

[23] *Snyder v. Crusader Servicing Corp.*, 231 A.3d 20, 31 (Pa. Super. 2020).

whether the breach caused harm to each class member, and what damages each class member suffered, if any, are all individual questions.

In their Amended Complaint, the plaintiffs describe the alleged duty owed by the Union to its members as a duty not to "conceal" from and not to "discourage," and also a duty to "disclose to its Union members and bargaining unit members the legal advice [that the Union and its officials received] regarding available pension benefits from vacation sellbacks."[24] In other words, the Union is accused of breaching its duty by committing either an omission, *i.e.*, "concealing" the sell-back benefits from its rank-and-file members, or a misrepresentation, *i.e.*, "discouraging" them from selling-back vacation. In essence, plaintiffs accuse the Union of giving them bad advice and/or failing to give them good advice with respect to selling back their unused vacation time to maximize their pension benefits.

In either the omission or the misrepresentation scenario, the court and the parties would have to undertake an individualized inquiry as to the following issues: 1) whether each class member's knew or did not know the benefit of selling back accrued vacation time before retiring or entering the City's DROP program; 2) whether each class member relied on the Union's concealment/discouragement in deciding not to sell back the maximum amount of vacation time allowable during the two years prior to retiring or entering DROP; and 3) whether each class member's actions would have been different if s/he had known or been told s/he could sell-back, and/or had not been discouraged from selling-back, his/her vacation days. In addition, the amount of damages each class member allegedly suffered in the form of lost pension benefits is different from one to another because each has/had his/her own career path within the Fire Department and his/her own vacation usage history.

[24] *See* Amended Complaint, ¶¶ 21- 22, 117.

Any putative class member who gained knowledge from any source, Union, City or otherwise, of the benefit of selling-back vacation time prior to retiring or entering DROP would likely not be able to recover damages as a member of the class. In other words, each class member's actual knowledge is relevant to determine if s/he may assert a claim, and such knowledge is unique to each of them. Similarly, it is an individual, subjective, question whether any putative class member felt "discouraged," "intimidate[d]," "pressured," or "ridicule[d]" into not selling-back his/her vacation time before retiring or entering DROP.[25]

In order to avoid having each putative class member testify as to his/her lack of knowledge and his/her reliance on statements made, or not made by, a variety of representatives of the Union and the City, the court would have to presume that, as a matter of law, the class members were all equally ignorant and completely reliant on their bosses and union representatives for information regarding vacation time sell-backs and pension benefits.[26] The court would also have to presume that, if each class member had known about the benefit of selling back his/her time to maximize his/her pension benefits, and had not been discouraged from doing so, he/she would have sold back the maximum amount allowed. This the court cannot do.[27] Proof as to one or a few class members'

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[25] Amended Complaint, ¶¶ 94-5.

[26] *See Basile v. H & R Block, Inc.*, 617 Pa. 212, 224, 52 A.3d 1202, 1209 (2012) ("[T]his Court will not presume this lack of knowledge on the part of an entire class.")

[27] *See id.* 617 Pa. at 227, 52 A.3d at 1211 (The Supreme Court recognized "[t]he practical problems with certifying class actions despite dissimilarity among claims arise from the natural human instinct to simplify the inherently complex and to create order out of what appears chaotic. . . . [However,] aggregating distinct individual claims into a class obscures differences among class members in ways that engender substantive consequences"); *Clark*, 990 A.2d at 27 ("Since Appellants have no presumption of reliance and/or causation under the law, they were required to prove reliance and/or causation on a class-wide basis in order to succeed on their claims")

personal knowledge, circumstances, and intentions is necessarily not proof as to each and every class member's knowledge, circumstances, and intentions.

## III. Named Plaintiffs' Claims are Not Typical of the Claims of the Class.

> The purpose of the typicality requirement is to ensure that the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members. Typicality exists if the class representative's claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class. The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented.[28]

Plaintiffs allege they suffered the same injury, *i.e.*, lower monthly pension benefits, because the Union and the City concealed from named plaintiffs the benefit of, and actively discouraged them from, selling-back vacation time. However, even between the two named plaintiffs there are significant differences in what they knew, when they knew it, whom they talked to, and what was said to them, about selling-back unused vacation time to increase their pension benefits.[29] As described previously, each class member's knowledge, reliance, choices, circumstances, and damages differ from those of each named plaintiff and from each other class member. Therefore, the named plaintiffs' claims are not typical of the class.

## IV. Plaintiffs and Class Counsel Could Fairly and Adequately Assert and Protect the Interests of the Class.

To determine whether named plaintiffs "will fairly and adequately assert and protect the interests of the class, the court shall consider[:]"[30]

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[28] *Samuel-Bassett*, 613 Pa. at 421-2, 34 A.3d at 30-1.

[29] Amended Complaint, ¶¶ 11, 34, 42, 52, 54-61, 73, 75, 80 (facts and knowledge unique to Mr. Farrell) *id.*, ¶¶13, 35, 41, 77, 96 (facts and knowledge unique to Mr. Viola).

[30] Pa. R. Civ. P. 1709.

1) whether the attorney for the representative parties will adequately represent the interests of the class;
2) whether the representative parties have a conflict of interest in the maintenance of the class action; and
3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.[31]

In this case, class counsel appear to be experienced attorneys who could adequately represent the interests of the class, and their firms appear to have adequate financial resources to pursue claims on behalf of a class if a class were to be certified.

## V. A Class Action is Not a Fair and Efficient Method by Which to Try This Case.

"In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider[:]"[32]

1) whether common questions of law or fact predominate over any question affecting only individual members;
2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
* * *
(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions; [and]
(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.[33]

As discussed previously, individual questions regarding class members' knowledge of their sell-back "rights", their reliance on Union and City representatives' omissions,

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[31] Pa. R. Civ. P. 1709.

[32] *Id.*, 1708.

[33] *Id.*, 1708(a).

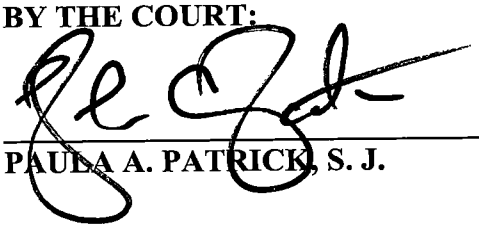
misrepresentations, and discouragement, their personal vacation choices, and their pension benefit damages outweigh any common question as to what duty the Union generally owed to its rank-and-file members. Therefore, the first consideration is not met.

The damages potentially recoverable by each of the class members – several hundred dollars per month over the course of their retired lives - is large enough to support each of them bringing an individual action, so the sixth consideration is not met.[34] Instead of a class action, the class member's individual claims would be more efficiently adjudicated in separate actions[35] for each member: 1) who claims that s/he had no knowledge of the pension benefits resulting from the selling-back of vacation days; 2) from whom some agents of the Union and/or City concealed such benefits and/or who was discouraged in some fashion by specific agents of the Union and/or City from selling- back vacation days; and 3) who could have, and would have, chosen to sell back the maximum, or some lesser amount, of vacation days to increase his/her pension benefits.

**CONCLUSION**

For all the foregoing reasons, the plaintiffs' Motion for Class Certification is denied.

**BY THE COURT:**



**PAULA A. PATRICK, S. J.**

[34] *See Kern*, 108 A.3d at 1290–91 ("Appellant challenges the trial court's conclusion that prospective class members most likely would have substantial bills. . . . .With respect to the question of whether the separate claims of individual class members are insufficient in amount to support separate actions, Appellant's own brief lends credence to the trial court's conclusion [that the amounts were substantial.] . . . Appellant points out that he submitted evidence to the trial court demonstrating that the average hospital bill was $3,093.73 and that his own bill was $14,626.53.")

[35] The court has several means of managing multiple, similar claims besides the class action mechanism. For instance, as in the court's Mass Tort Program, it is possible to assign a unique case type to all such similar individual claims and have them assigned to the same judge for coordination of discovery and/or court events.