

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

FEDERACIÓN CENTRAL DE
TRABAJADORES,
Plaintiff,

CIVIL NO:

v.

HON. ALEJANDRO GARCÍA PADILLA,
HON. GABRIEL LÓPEZ ARRIETA, HON.
LUIS CRUZ BATISTA,
Defendants.

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW Plaintiff, Federación Central de Trabajadores (“FCT”) through the undersigned counsel, and very respectfully states, alleges and prays as follows:

I. JURISDICTION

1. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 since it is an action arising under the Constitution and laws of the United States, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

2. The Court has supplemental jurisdiction over the claims asserted by plaintiff under pursuant to 28 U.S.C. §1367 because they are so related to the claims upon which the Court has original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

3. The remedy requested is specifically authorized pursuant to 28 U.S.C. § 2201 (declaratory judgment). There is a present and actual controversy between the parties.

4. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391, as this

action is brought in the judicial district in which all the defendants are residents and the facts relating to the causes of action arouse in this District.

II. PARTIES

5. Federación Central de Trabajadores, UFCW, Local 481, (“FCT”), is a certified labor organization within the meaning of Act No. 45-1998, 3 L.P.R.A. 1451 et seq., (“Act No. 45”) that is the exclusive representative of the employees of the Puerto Rico Public Housing Administration (“PRPHA”), with offices in: Avenida Betances # 91, Urbanización Hermanos Dávila, Bayamón, PR 00961; Tel.: 787-268-0408;

6. Defendant Hon. Alejandro García Padilla is the Governor of the Commonwealth, with offices in: La Fortaleza, San Juan, PR 00901. Plaintiff sue the Governor in his official capacity.

7. Defendant Hon. Gabriel López Arrieta is the Administrator of PRPHA, with offices in: Ave.Barbosa #606 Edif. Juan C. Cordero Piso 9, San Juan, PR 00939-3188. Plaintiff sue the Administrator in his official capacity.

8. Defendant Hon. Luis Cruz Batista is the Director of the Puerto Rico Office of Management and Budget (“OMB-PR”), #254 Calle Cruz Esquina Calle Tetuán, San Juan, PR 00901 Plaintiffs sue the OMB-PR Director in his official capacity.

III. FACTS

9. Federación Central de Trabajadores, UFCW, Local 481, (“FCT”), is a labor union that is the exclusive representative of the employees of the Puerto Rico Public Housing Administration (“PRPHA”).

10. PRPHA is a is a governmental entity created by Commonwealth of Puerto Rico, which is responsible for administering most of Puerto Rico's public housing and to ensure their maintenance and rehabilitation.

11. PRPHA is a recipient of funds of the U.S. Department of Housing and Urban Development ("HUD") under the Public and Indian Housing Program.

12. PRPHA, as any other Public Housing Authority, needs to submit a "Public Housing Annual Plan" where among other things, it must state the financial resources available to the agency and the planned uses of those resources.

13. PRPHA is currently misusing the resources granted by HUD for its operations.

14. PRPHA or any other Public Housing Authority, without the consent of HUD, cannot use granted funds for any other purpose than those included in the annual plan.

15. PRPHA misuse of federal funds exposes itself, the government of Puerto Rico and its officials; to severe administrative and/or criminal penalties, including and loss of those funds.

16. Back in 2013, PRPHA and the FCT entered into a collective bargaining agreement effective from November 13, 2013 until June 30, 2017 ("Collective Bargaining").

17. Among the provisions of the same, PRPHA agreed to concede two pay raises for union members, for fiscal years 2013-2014 and 2014-15.

18. After the award of the pay raise for fiscal year 2013-2014, the Commonwealth enacted the "Government of the Commonwealth of Puerto Rico Special

Fiscal and Operational Sustainability Act”, Act No. 66-2014, as amended (“Act 66-2014”).

19. Said statute, established a *prima facie* prohibition to local agencies to grant increases in economic or monetary compensation benefits for state workers.

20. Nevertheless, the act provided for an alternative process, which allowed workers to enter agreements with the state that could set aside the general rule adopted by statute.

21. With the high degree of responsibility that characterizes the union, the FCT and other public sector unions entered an agreement with the Government of Puerto Rico, by making some concessions to avoid the application of Act 66-2014.

22. Thru it, among other things, FCT agreed to postpone the wage increase provisions of the Collective Bargaining scheduled for fiscal year 2014-15.

23. There, FCT agreed that the economic situation of the agency would be reviewed at the end of each year, to determine whether PRPHA could make appropriate adjustments to grant the wage raises postponed by the agreement.

24. Among other things, for that reason, this year, PRPHA requested and obtained an increase of federal funding to cover for the agency operating expenses, including but not limited, its human resources.

25. Earlier this year, PRPHA and the FCT agreed that the former would ask the Office of Management and Budget of Puerto Rico ("OMB-PR") the disbursement of

the wage increases originally scheduled for fiscal year 2014-15. See, Attachment No. 1, Agreement between PRPHA and FCT.¹

26. Originally, PRPHA fulfilled its obligations and requested the OMB-PR the disbursement of funds for the aforementioned wage increase, since the resources for such an increase would be covered by federal funds available for that purpose, as approved by the Governing Board of the PRPHA.

27. However, to FCT surprise, on September 1, 2016, OMB-PR rejected PRPHA application to grant a wage increase of \$135.00 per employee. This decision puts in jeopardy PRPHA employees and the federal funds granted to said agency. (See, Attachment No. 2, OMB-PR rejection of PRPHA application for a wage increase)²

28. For the current fiscal year, PRPHA's budget operating expenses reflect an increase of \$8,115,000 compared to the resources allocated for Fiscal Year 2015-2016.

29. This increase is mainly due to the increase in Federal Funds and PRPHA own revenues. Likewise, in the line of Operating Expenses we observed an increase in the concept of "Payroll and Related Costs" from \$119,215,000 to \$122,413,000.

30. While job spaces occupied only increase from 369 to 370. In other words, PRPHA obtained \$3,198,000.00 in additional funds for payroll, to concede the wage increases negotiated in the Collective Bargain.

31. FCT is deeply concerned, that pursuant to OMB-PR's decision, the PRPHA and/or OMB-PR can utilize those funds for other purposes, other than for the intended one, to grant a salary increase to PRPHA employees.

¹ Original is in Spanish Language. A Motion for Leave to File the Attachment in Spanish Language will be filled jointly with this Complaint.

² Id.

32. Upon such determination, the FCT requested the PRPHA to take the necessary steps to enforce its duty in law and with its employees and to comply with the budget presented to HUD and the collective agreement. (See, Attachment No. 3, Letter to PRPHA Administrator).³

33. At the filing of this Complaint, Defendant PRPHA has not taken any action on the matter.

34. Likewise, FCT sent letters to HUD and its Inspector General requesting to act on the matter, since these illegal actions of the OMB-PR and the Commonwealth are putting at risk federal funds and workers' moneys. (See, Attachments No. 4 & 5, Letters to HUD and its Inspector General).

35. As applied, Article 5 of Act No. 66-2014, violates the Supremacy Clause of the Constitution of the United States.

36. As applied, Article 5 of Act No. 66-2014 impairs the contractual rights of the PRPHA workers under their collective bargaining. Such impairment, is neither reasonable nor necessary to serve an important governmental purpose.

37. By its application, Article 5 of Act No. 66-2014, denies PRPHA workers of the moneys they were awarded by the collective bargaining.

**IV. FIRST CLAIM FOR RELIEF
(Declaratory Judgment that Act 66-2014 Violates the Contracts Clause of the U.S.
and P.R. Constitutions)**

38. FCT realleges as if fully set forth herein, paragraphs 1-37 (both included).

39. Plaintiffs seek a declaration that Article 5 of Act No. 66 is unconstitutional on its application, since it violates the supremacy clause of the Constitution of the United States.

³ Id.

40. An actual, substantial, and justiciable case or controversy exists between the parties with respect to these issues and claims. This Court has the power to adjudicate the rights of the parties with respect to this controversy, and should grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Federal Rule of Civil Procedure 57.

**V. SECOND CLAIM FOR RELIEF
(Declaratory Relief for Violation of the Takings and Due Process Clauses)**

41. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 40 of this Complaint.

42. The Fifth Amendment to the U.S. Constitution provides that “private property [shall not] be taken for public use, without just compensation” (the “Takings Clause”). See U.S. Const. amend. V. The Takings Clause applies to the Commonwealth through Section 1 of the Fourteenth Amendment. See U.S. Const. amend. XIV, § 1.

43. The Fifth and Fourteenth Amendments to the U.S. Constitution ensure that no person shall be deprived “of life, liberty, or property, without due process of law.” U.S. Const. amend. V; id. amend. XIV.

PRAYER FOR RELIEF

WHEREFORE, Federación Central de Trabajadores respectfully request that this Honorable Court enter judgment in his favor and against the Defendants, jointly and severally:

a) Declaring that Article 5 of Act No. 66-2014, and any prospective enforcement thereof or authorization thereunder, is unconstitutional on its application, since it violates the supremacy clause of the Constitution of the United States.

b) Declaring that Article 5 of Act No. 66-2014, and any prospective

enforcement thereof or authorization thereunder, violates the Takings and Due Process Clauses;

c) Enjoining Defendants from utilizing funds appropriated to the PRPHA by HUD for other purposes than those awarded;

d) Awarding Plaintiffs' costs and attorneys' fees as authorized under 42 U.S.C. § 1983; and

e) Granting such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of December 2016.

SUÁREZ LLC
PO BOX 361686
San Juan, PR 00936-1686
Telephone: 787-379-2617
Fax: 787-777-1350

S/ Saúl Suárez Flores
USDC-PR No. 300307
ssf@suarezllc.om