No. 22-0185

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JAYSON NICEWARNER, et al.,

Plaintiffs Below/Petitioners,

v.

No. 22-0185
(CIRCUIT COURT OF MONONGALIA COUNTY CIVIL ACTION NO. 19-C-167)

THE CITY OF MORGANTOWN,
a municipal corporation,

Defendant Below/Respondent,

SUPPLEMENTAL BRIEF OF RESPONDENT, THE CITY OF MORGANTOWN

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I. INTRODUCTION

Pursuant to the Court's January 19, 2023, Order, Respondent, The City of Morgantown, ("Respondent," "Morgantown," or "City") offers the following supplement to its previously filed *Brief of Respondent, The City of Morgantown* to address arguments made within the late-filed *Brief of Amicus Curiae Professional Fire Fighters of West Virginia Supporting Reversal of Decision Below.*

This is a case of statutory interpretation and the application of settled law. As demonstrated in the prior briefings of the parties, Petitioners' claims are based on misapplications and misinterpretations of W. Va. Code § 8-15-10a (the "Holiday Statute"), the Wage Payment and Collection Act, and applicable precedent interpreting the same. In its supporting brief, Amicus Curiae, the Professional Firefighters of West Virginia ("Amicus"), appears to fully adopt the same incorrect arguments.[1]

Amicus purports to only address one of the four assignments of error raised by the Petitioners. As identified by Petitioners, that particular assignment seeks for this Court to find that "[t]he Trial Court erred when it failed to order, regardless of the shift start time, a firefighter who works a 24-hour shift should receive 24 hours of paid time off under W. Va. Code § 8-15-10a." (Pet'rs Br. at 1.)

Like Petitioners before them, however, Amicus either misapplies – or simply ignores – binding and persuasive authorities on the issue; relies on a Circuit Court decision that was issued without consideration of the record and factual basis for the controlling precedent applicable to this matter; and misstates the factual record. The City responds to these erroneous arguments in turn, *infra*.

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[1] As such, the City incorporates by reference herein its previously filed *Brief of Respondent, the City of Morgantown.*

II. ARGUMENT

In its Final Order, the Circuit Court correctly found that W. Va. Code § 8-15-10a requires holiday benefits for "hours worked during" legal holidays or a separate benefit for days falling on a "regular scheduled day off," relying on the text of the Holiday Statute, the formal guidance of the Office of the Attorney General in 57 W. Va. Op. Atty. Gen. 171 (1977) (the "Attorney General Opinion"), this Court's decision in *Pullano v. City of Bluefield* in 1986, and the underlying record of the same (J.A. 1250-77.)

Within its Brief, Amicus proffers that "Firefighters deserve to receive the full measure of the holiday pay afforded [to] them by the Legislature—no more, no less." (Am. Br. at 4.) Yet, Amicus and Petitioners do, in fact, seek a decision from this Court that would result in employees receiving considerably **more** than what the Legislature ever intended, and more than municipalities could shoulder financially.

Amicus asks this Court to legislate from the bench and make an erroneous ruling. Like Petitioners before them, Amicus asks this Court to ignore the actual authority relevant to this matter in order to do so.

A. BY GRANTING THE CITY SUMMARY JUDGMENT, THE LOWER COURT ENSURED THAT THE LETTER AND SPIRIT OF W. Va. CODE § 8-15-10a WERE MET.

Under binding precedent and formal guidance, firefighters who work during a holiday are entitled to **equal** time off for the hours worked on that holiday, not for twenty-four hours. Firefighters who do not work on a holiday are entitled to **equal** time off for time they would have worked on that holiday. No firefighter is entitled to claim a legal holiday as both a workday and a day off, and neither a firefighter nor a municipality can change how much time off a firefighter receives by how they characterize a work shift.

Changing the rule now as Petitioners and Amicus ask would limit public services, raise taxes, and create new obligations on public funds never adopted by the legislature. Municipalities provide essential public services and are required to operate on a cash basis – spending available public funds on services each year within the revenues collected. These concerns, however, are wholly ignored by Amicus and Petitioners in their respective briefs to this Court.

Like other municipalities, the City's administration of benefits under W. Va. Code § 8-15-10a has been based on the aforementioned interpretation by the Attorney General. In fact, the very first question resolved by the Attorney General in his 1977 Opinion was as follows:

> Does new Code 8-15-10a contemplate only an 8-hour workday so that a fireman who normally works a 24-hour shift from 7:00 a.m. to 7:00 a.m. shall be allowed time off or eight hours of time and a half (equivalent of 12 hours) of pay when his regularly scheduled day off occurs on a holiday?

In response, the Attorney General concluded that: "when a regularly scheduled duty shift established according to the provisions of Code 8-15-10, or any part of such shift, falls on or within the **24-hour period of a legal holiday** or on or within any day proclaimed or to be taken as a legal holiday by virtue of Code 2-2-1, each fireman working that shift or each off-duty fireman, on whose regularly scheduled day off the holiday has occurred, **is entitled to be credited, as time off, with the number of off-duty hours equivalent to the number of duty hours worked by him (or which would have been worked by him in the case of an off-duty fireman) which fall within the 24-hour holiday period**." 57 W. Va. Op. Att'y. Gen. 171 at *3. (emphasis added).

In his conclusion, the Attorney General specifically explains that the hours to be credited to a firefighter are the "equivalent" of those that he or she worked on the holiday or which he or she would have worked on the holiday. In an effort to make this point even more clear, the

Attorney General goes on to give a detailed example that is very much analogous to the issue(s) before this Court:

> As an example, if the legal holiday falls on a Sunday, the following Monday will be taken as the legal holiday (Code 2-2-1) and firemen working on a regularly scheduled duty shift commencing at 6:00 p.m. on Monday and ending at 6:00 p.m. on Tuesday will be entitled to **6 hours of credited time off**, or, in lieu thereof, to not less than one and one-half their regular rate of pay for 6 hours, whereas those firemen whose shift had ended at 6:00 p.m. on that Monday (the day taken as the holiday) would be **credited with 18 hours of time off**, or, in lieu thereof, to not less than one and one-half times their regular rate of pay for 18 hours.

Id. (emphasis added).

The Opinion and the included example have given clear guidance to Morgantown and other municipalities for decades. The Opinion established that firefighters receive leave for either (1) holiday time actually worked, or (2) holiday time they actually would have worked. Nowhere in the "letter" of the Code, nor in its thorough review by the Attorney General, does it state that employees receive leave for **both** time worked and for time off on the same holiday. Such a conclusion is illogical given the clear choice afforded to municipalities in the Code. Yet, this is seemingly what Amicus seeks, despite the claim that the Petitioners are entitled to "no more" than what the Legislature has provided for.

Similar to the example explicitly offered by the Attorney General, the City's firefighters work 24-hour shifts **beginning at 8:00AM each day**. Therefore, on any given day, including any and every legal holiday, a firefighter will work either 16 hours or 8 hours (or will be on his regular scheduled day off). With this in mind, neither the language of the Code, legal precedent, nor a fair analysis of the issues would afford the employees with 24-hours of additional leave per each and every legal holiday, as they now seek.

The Code's language requiring "equal" time off could only require 24 hours of leave if that was "equal" to time that was worked or would have been worked during the 24-hour holiday period. The Petitioners would not be working 24 hours on a holiday barring an extreme emergency scenario.

As discussed more thoroughly below, the West Virginia Supreme Court of Appeals has likewise confirmed that the time off for holidays is equal to the hours worked on a holiday rather than the total shift length. In *Pullano v. City of Bluefield*, where firefighters **were working twenty-four hour shifts**, the Court found that the maximum hours a firefighter might work on a holiday – 16 hours – was the appropriate measure for time off. 176 W. Va. 198, 205-6, 342 S.E.2d 164, 172 (1986).

The law is well-settled that the time off afforded under W. Va. Code § 8-15-10a is equal to the time worked rather than the shift length. In addition to ignoring this precedent, Amicus further fails to account for the clear direction given by the Attorney general.

Stated otherwise, the City's application of W. Va. Code § 8-15-10a has always been based on the language of the statute and the guidance provided by the Attorney General, which squarely rejects Amicus's arguments. To find that the City's interpretation was false requires that the Court ignore the plain meaning of the word "equal" as well as the direct interpretation of the statute that has been undisturbed for over forty years.

It is unsurprising that, like Petitioners before it, Amicus does not mention the Attorney General Opinion. While a formal Attorney General opinion is not binding, "it is persuasive when it is issued rather contemporaneous with the adoption of the statute in question." *Walter v. Ritchie*, 156 W. Va. 98, 109, 191 S.E.2d 275, 282 (1972). Moreover, our state's municipalities have relied on these rules when compensating their employees for decades.

The Holiday Statute grants benefits for hours worked during legal holidays, not the length of a shift. The law on these points is established, and the outcome in this case is dictated by *Pullano v. City of Bluefield*, which reached the same conclusion as the Attorney General Opinion and is consistent with the text of the Holiday Statute. Because the Circuit Court properly applied the established law, Morgantown asks this Court to affirm the Final Order.

B. ALL RELEVANT PRECEDENT HOLDS THAT PETITIONERS ARE ONLY ENTITLED TO TIME OFF FOR HOURS ACTUALLY WORKED.

Amicus attempts to distinguish this present matter from the decision in *Pullano v. City of Bluefield* by asserting that the focus should not be on the municipalities' obligations pursuant to the Holiday Statute but, instead, should center on how the City treats the shifts for payroll purposes. Not only is this argument without support, it is also illogical based on the Court's conclusions in *Pullano*.

Contrary to Amicus's present arguments, the Court's holding in *Pullano*—and the underlying facts that led to that holding— demonstrate its precedential value. In *Pullano*, the Court held that firefighters working 24-hour shifts were given adequate time off with 16 hours' leave because, "[t]his sixteen-hour figure represented the maximum number of hours a firefighter **could work in a shift on a legal holiday under the firefighters' work schedule.**" *Pullano,* 176 W. Va. at 205, 342 S.E.2d at 172. (emphasis added). This conclusion was fully aligned with Attorney General's analysis, finding that time off is granted for actual hours that are worked (or the maximum that could be worked) on a holiday—not the length of the overall shift. 57 W. Va. Op. Att'y. Gen. 171 at *3. To combat this, Amicus and Petitioners rely on unsupported contentions, red herrings, and misstatements of testimony.

1. THE RECORD IN PULLANO DEMONSTRATES THAT IT WAS APPOSITE TO THE PRESENT DISPUTE.

Amicus's attempt to distinguish *Pullano* seemingly begins and ends with the assertion that *Pullano* does not apply because, the Petitioners shifts are treated as one day. (Am. Br. 9.) Amicus does not, however, explain why this distinction would matter to the analysis here. Moreover, its contentions entirely misstate the City's practices and testimony in this matter, and seemingly ignores the *Pullano* record at the same time.

Beginning with the latter, the briefings in *Pullano* do reflect that the Bluefield firefighters' 24-hour shifts were divided in 10-hour and 14-hour increments for payroll purposes. However, the relevant holdings in *Pullano* do not address 14-hour and 10-hour increments of pay or time off. Instead, these practices were immaterial to the actual analysis, wherein the Court found that Bluefield firefighters were entitled to holiday time off for the "number of hours a firefighter could work in a shift on a legal holiday." *Pullano,* 176 W. Va. at 205, 342 S.E.2d at 172. The Court concluded that number of hours to be 16 (not 14 or 10), just as it is in this case. No other qualifiers were attached to this conclusion, and the Court did not find that 10 hours or 14 hours of leave time was due. Therefore, the only way this conclusion does make sense is if it was based on the employees' work schedules, not the city's payroll practices, which is exactly what is reflected by *Pullano* and the Attorney General.

Holidays, like any other day, run for 24 hours, begin at 12:00AM, and conclude at 11:59PM. A city's payroll practices cannot change this fact. The lower court appropriately applied these same conclusions and rationale to the matter at hand when it found that equal time off for the City's firefighters should be credited at either 8 hours or 16 hours, reflecting the time worked (or maximum that could be worked) on a legal holiday. (J.A. 1273, ¶67.) In reaching this

conclusion, the Circuit Court reasonably applied the same analysis performed by *Pullano* and the Attorney General and rejected Petitioner's (and now Amicus's) unsupported claims to the contrary.

Amicus ignores the fact that, as was disclosed by the City in this matter,[2] the record that was before the Supreme Court in *Pullano* established that Bluefield firefighters were working 24-hour shifts, spanning from 8:00AM to 8:00AM the following day. Stated otherwise, the shifts considered in *Pullano* were the exact same 24-hour shifts at issue in this case (with the same start and end times). This finding ultimately makes the conclusions reached by the Court in *Pullano* even more pertinent to this Court's own analysis.

Like the Attorney General's Opinion before it, the clear guidance provided by the *Pullano* court and the facts upon which it relied are ignored by Amicus. Instead, Amicus relies upon a Circuit Court decision to support its otherwise-unsupported arguments.

2. AMICUS'S ONLY LEGAL SUPPORT IS AN UNRELATED ORDER FROM ANOTHER CIRCUIT COURT THAT IS BASED UPON ERRONEOUS FINDINGS AND CONCLUSIONS.

Amicus's only substantive argument as to firefighter leave relies entirely on a Berkeley County Circuit Court order.[3] In that Circuit Court order, which was seemingly prepared by the present Petitioners' counsel, the Circuit Court found that Martinsburg, which grants firefighters premium pay for holidays rather than time off, must pay firefighters premium pay for 24 hours for each holiday, regardless of the hours they worked. (*See* J.A. 324-35.)

In its Order, the Berkeley County Circuit Court held that, "In *Pullano* there was no factual development of Bluefield firefighters working a twenty-four hour shift. Nowhere in *Pullano* was

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[2] The record before the Supreme Court in *Pullano* and the payroll records of the City of Bluefield that were involved in the *Pullano* decision have been filed with the lower court and included in the Joint Appendix in the present appeal so that there can be no dispute of material facts as to the ruling in that case.

[3] Amicus refers to this matter as *Stroop v. The City of Martinsburg*. A copy of the Order from that matter can be found at J.A. 324-335.

a twenty-four hour shift discussed or mentioned." (J.A. 333.) Petitioners and Amicus rely on this portion of the Berkeley County order as the basis for their claim to "24 hours compensation time or 36 hours pay for each legal holiday." (Am. Br. 8.)

Through the course of litigation and briefings, it has become apparent that the Berkeley County Circuit Court was not privy to the records demonstrating that Bluefield's firefighters actually worked the exact same 24-hour, 8 a.m. to 8 a.m. shifts currently worked by Morgantown's firefighters when it concluded:

> The Defendant relies upon a portion of *Pullano* that indicated the City of Bluefield began paying its firefighters time and half **based on sixteen hour shifts as holiday pay.** "This sixteen-hour figure represented the maximum number of hours a [Bluefield] firefighter could work in a shift on a legal holiday under the firefighters' work schedule." *Pullano* at 172. Because sixteen hours is the maximum number of hours a Bluefield firefighter can work, the Supreme Court affirmed the trial court decision that those fighters were entitled to time and a half for sixteen hours whether they worked or not. **In *Pullano* there was no factual development of Bluefield firefighters working a twenty-four hour shift.**

(J.A. 332-33.)

As discussed hereinabove, the record that was actually before the Supreme Court in *Pullano v. City of Bluefield* – the same record now before this Court – showed that Bluefield firefighters were, in fact, working 24-hour shifts beginning and ending at 8:00 a.m. In *Pullano*, the portion of the Mercer County Circuit Court ruling upheld by the Supreme Court specifically included the following:

> (d) For holiday hours worked between April 30, 1978 and December 31, 1979 the City shall grant its firefighters equal time off or pay as will entirely compensate them for all time spent at work during holidays as identified above under W. Va. Code 8-15-10a.

(J.A. 778.)

Further, the Bluefield firefighters were working 24-hour shifts beginning at 8 a.m. one calendar day and ending at 8 a.m. the next as described in the record:

> **(b) Work schedule for members of the fire department.**
> Plaintiff Fivars and all other firemen employed by the City of Bluefield normally work a twenty-four (24) hour working shift starting at 8:00 a.m. and concluding at 8:00 a.m. the following day.

(*Id.*) (emphasis in original).

As such, and contrary to all of Amicus and Petitioner's attempts to recast the *Pullano* court's decision as something else entirely, 24-hour shifts were considered in *Pullano v. City of Bluefield*, and they are the same shifts at issue in this case. Therefore, when the *Pullano* Court held that 16 hours' time off is sufficient under W. Va. Code § 8-15-10a because it was "the maximum number of hours a firefighter could work in a shift on a legal holiday[,]" it was ruling on exactly the same shift schedules that Morgantown's firefighters are working. 176 W. Va. 198, 205, 342 S.E.2d 164, 172.

Accordingly, Morgantown was entitled to summary judgment on Count III of the Complaint, declaring that Petitioners are entitled to time off for holidays based on the hours they actually work on a holiday, not their shift length.

3. AMICUS MISSTATES THE CITY'S PAYROLL PRACTICES.

In its Brief, Amicus repeatedly claims that, "in the City of Morgantown, firefighters' 24-hour shifts are treated as occurring on one calendar day." (*See, e.g.,* Am. Br. 10.) Amicus further states that: "a firefighter's 24-hour shift is considered one day for purposes of payroll, sick days, bereavement days, and vacation days, among others, even though the shift spans more than one calendar day." (Am. Br. 6-7). This is another false statement.

In making these assertions, Amicus appears to merely adopt Petitioners' own arguments on the subject; however, like Petitioners, Amicus is relying on irrelevant and inaccurate factual

assertions related to the City's payroll practices. Whether intentional or not, this is clearly a misstatement of the record and the witnesses' testimony.

As partially referenced by Amicus, one of those witnesses who testified in this matter was the (now) former City Finance Director, Dave Schultz,[4] who, in regard to its leave policies, more fully and accurately stated:

> A. Yeah. A day would be associated. Like, May 7th was a bereavement day. But it doesn't have to be 24 hours used at one time. They may leave halfway through their shift to go directly to a funeral. It's not like they have to take 8:00 a.m. to 8:00 a.m. the next day in its entirety.
> Q. Okay. And that's the same with a sick day?
> A. Right. It's really a bank of hours, not a bank of days.

(J.A. 1415, 36:2-11.)

This mischaracterization of the witnesses' testimony extends to others, including Finance Director James Goff. During Mr. Goff's deposition, he was likewise asked if payroll records submitted by Petitioners report a shift when they take leave on a single calendar day, and Mr. Goff responds, "It—it appears they take one day off, 24 hours." (J.A. 1327). In the same deposition, Mr. Goff had already responded to Petitioners' counsel's request to describe a shift that spans two calendar days as being attributed to one calendar day in the paperwork by saying: "It's 24 hours." (J.A. 1326-7). Mr. Goff also instructed Petitioners' counsel that holiday leave is accrued in hours. (J.A. 1319).

Through an accurate reading of the testimony, it is established that Morgantown employees accrued paid leave in one-hour increments, and it required that they be used in increments of one hour or less. (J.A. 1415). Petitioners' own exhibits, filed in the briefing on summary judgment,

[4] Amicus seem to mainly cite to J.A. 1033, lns 15-19 for their assertions. It appears that this reference should have been to J.A. 1035.

show that firefighters took leave for portions of shifts and recorded leave in hour amounts. (*See* J.A. 1033-34.)

Moreover, payroll records show several firefighters taking leave amounts less than 24 hours, (e.g. "Jones, 0800-2000," "Brandstetter, 0400-0800," "Rinehart, 1700-800") and recording leave amounts in increments as small as 0.5 hours. (*Id.*) The record before the Court now simply does not support Petitioners and Amicus's claim that Morgantown treats a work shift as equal to a calendar day for purposes of calculating and using benefits.

To the extent the pay practices were relevant, they would support granting Petitioners twelve hours of benefits per holiday, given that that was the historical established amount assigned for each legal holiday from the total annual holiday leave accrued to each employee as of January 1. (J.A. 1408.)

While these minor factual disputes are not determinative of the legal questions before the Court on appeal, they do reflect the inherent problems with many of Petitioners' and Amicus's arguments, which were also observed by the Circuit Court:

> THE COURT: Okay. Now, at the June 16 hearing, Mr. Miller, you asked to admit a document which was marked Exhibit Number 1. And it was a payroll sheet. And during that hearing, you referenced the first line involving a fireman by the name of Morgan. And the shift went from 8:00 to 8:00. But I looked down through that exhibit -- and I see, for instance, under the name of Glenn, there was two hours of vacation time taken.

(J.A. 1481 at 17:9-16.)

The record is clear that there are numerous instances demonstrating that leave time is treated by hours, not days. More importantly, as the Court has previously observed, the dispute regarding the Holiday Statute cannot be based on how days are referenced by the municipality's payroll. Such a result is unjust and illogical based on precedent and basic statutory construction.

As addressed, *infra*, Amicus bases its claims on an argument that the legislation at issue should authorize greater benefits than it does because of the importance of their professional duties. That argument is for the legislature, rather than appeal, because this Court "cannot rewrite a statute so as to provide relief ... nor can [it] interpret the statute in a manner inconsistent with the plain meaning of the words." *State v. McClain*, ____ W. Va. ____, 880 S.E.2d 889, 897 (Nov. 17, 2022) (*quoting VanKirk v. Young,* 180 W. Va. 18, 20, 375 S.E.2d 196, 198 (1988); *McVey v. Pritt*, 218 W. Va. 537, 540-41, 625 S.E.2d 299, 302-03 (2005)); *Beasley v. Sorsaia*, ____ W. Va. ____, 880 S.E.2d 875, 881 (Nov. 11, 2022).

In rejecting the Petitioners' theories, the Circuit Court relied upon statutory construction, binding and persuasive precedent, and sound legal analysis to reach its decisions. That is not an error; it is sound jurisprudence.

C. AMICUS'S PUBLIC POLICY CONCERNS ARE MISPLACED.

Amicus next provides a summary argument that seemingly aims to establish that the firefighting profession has inherent dangers associated with it. (*See generally* Am. Br. §III.) The relevancy of these arguments is unclear to Respondents. There is no dispute as to the dangers of the profession, nor is such an analysis pertinent to a matter calling for the application of establish law. Importantly, there is also no basis to claim that the lower court failed to properly account for the "unique sacrifices" that are made by firefighters. (*See id.*, at 10.)

In fact, the lower court clearly based its own decisions on the strong public policy that underlies § 8-15-10a, and which Amicus fails to address, even in part. Based on their prior briefings and oral arguments, the remedy Petitioners seek, for both current and former employees, is a monetary windfall at taxpayers' expense. It is this position that truly goes against the public

policy that underlies § 8-15-10a's provisions as has been emphasized by the Attorney General and this Court.

As provided for by the former Attorney General:

> Undoubtedly, the Legislature, recognizing that substantial additional funds raised by tax levy would be required in order to meet the premium wage specified in the two statutes, purposely left to the municipal governing bodies themselves, rather than to the chief of the fire department and the chief of the police department, the decision as to whether the additional compensation on account of holidays would take the form of time off or extra wages, and, in the event the decision is in favor of extra wages, the amount thereof.

57 W. Va. Op. Att'y Gen. 171, at *6. In addition to recognizing that the Legislature carefully considered monetary impacts on the public body when drafting the Holiday Statute, the City believes that these same public policy concerns were at the heart of the Circuit Court's inquiries, as well.

During a September 2021 hearing on the City's Motion for Summary Judgment, the lower court asked the Petitioners' counsel: "I don't know if I'm being clear or not. But let's suppose a fireman worked two hours on a holiday and then decided he wanted to take the rest of the day off to spend time with his family. Is he entitled -- he or she entitled to the full 24 hours?" (J.A. 1481 at 17:17-21.) Under Amicus and Petitioners' theories, an employee who worked 1 hour, 16 hours, or 0 hours on a legal holiday would be entitled to 24-hours of time off (or premium pay as Petitioners contend). In effect, if Amicus's arguments are followed, the entire first half of W. Va. Code § 8-15-10a allowing equal time off is meaningless.

Amicus and Petitioners persist in making this argument despite the clear language of § 8-15-10a providing for **equal** time off; despite the clear precedent holding that only the actual hours that fall on a 24-hour holiday period are to be considered; despite sitting on their claims for decades; and despite the immense burden this would place on the taxpayers of Monongalia County.

As Amicus and Petitioners admit, all Morgantown firefighters were paid for every hour they worked on every given holiday. In addition, each employee was historically granted a bank of leave time equivalent to 12 hours per legal holiday in a special bank of leave time each year to account for § 8-15-10a's requirements. This bank of leave was provided in addition to hundreds of hours of paid vacation time and sick leave. Finally, the Morgantown Fire Department has remained some 95%+ staffed for the entirety of this litigation.

While Amicus now attempts to conform the legal precedent and § 8-15-10a to fit this strained interpretation of the applicable law, the result Amicus and Petitioners seek remains the same—and that result would be an example of an obvious injustice to the City and its taxpayers.

III. CONCLUSION

In accordance with this well-settled law, Petitioners are not entitled to a premium rate of pay, and they are not entitled to be compensated for a minimum of twenty-four hours of compensatory time for holidays in which they did not work twenty-four hours. They are only entitled to time off for hours that they actually worked on the holiday, or for their regular days off.

The Circuit Court's holdings are consistent with the settled-law upon which municipalities have relied for nearly four decades. The law on these points is established, and the outcome in this case is dictated by this Court's holding in *Pullano*, which reached the same conclusion as the Attorney General and is consistent with the text of the Holiday Statute.

West Virginia Code § 8-15-10a grants time off for hours that were worked, or would have been worked, during legal holidays. It does not grant those benefits for the length of a shift. Further, an employer who fails to give sufficient time off can correct the error by giving additional time off – as nothing in the Holiday Statute directs that time off be paid instead. Because the

Circuit Court properly applied this established law, Morgantown asks this Court to uphold the Final Order.

RESPECTFULLY SUBMITTED,

THE CITY OF MORGANTOWN,
BY COUNSEL

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CERTIFICATE OF SERVICE

I, Matthew D. Elshiaty, do hereby certify that on the 3rd day of February, 2022, I served a true and correct copy of **SUPPLEMENTAL BRIEF OF RESPONDENT, THE CITY OF MORGANTOWN** upon the parties and their counsel listed below via facsimile transmission as indicated:

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