

FILED

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Case No. 17 CVS 15741

MICHAEL D. CLUMPNER and)
JEFFREY S. MATTHEWS,)
Plaintiffs)

COMPLAINT

-v-

CITY OF CHARLOTTE,)
Defendant)

PRELIMINARY STATEMENT

1. This is an action seeking declaratory and injunctive relief to require the City of Charlotte to follow its policies regarding promotional processes within the Charlotte Fire Department. Those policies were violated when the promotional list for Battalion Chief on which Plaintiff Clumpner and Plaintiff Matthews were both listed as eligible candidates, was summarily and arbitrarily terminated by the Fire Chief in December, 2016. The failure of the City and its officials to follow and comply with policies duly enacted by the City Council constitutes arbitrary and capricious action in violation of Plaintiffs' constitutional rights to due process and equal protection guaranteed by Article I, Sections 1, 19 and 35 of the Constitution of North Carolina. Plaintiffs seek promotion to Battalion Chief, as should have occurred if the City's policies had been followed, and back pay including fringe benefits, as well as retroactive seniority as Battalion Chiefs. They also request permanent injunctive relief to assure that the City and the Fire Department conduct promotional processes and promotions in a fair and equitable manner in compliance with the duly enacted City policies.

PARTIES

2. Plaintiff Michael Clumpner has been employed with the Charlotte Fire Department

since on or about January 5, 2003. He has had an excellent career in the Fire Department, and has received a number of promotions, including being promoted to the rank of Fire Captain on or about May 10, 2009. He has been performing in the capacity as a Fire Captain providing first responder and fire suppression services to the residents of the City of Charlotte continuously since that date, and continues to perform in that capacity.

3. Plaintiff Clumpner resides in Concord, North Carolina which is in Cabarrus County.

4. Plaintiff Matthews joined the Charlotte Fire Department on or about February 17, 2003. He has had an excellent career with the Fire Department, and has received a number of promotions, including being promoted to Fire Captain on or about January 2, 2010. He has been performing in the capacity as a Fire Captain providing first responder and fire suppression services to the residents of the City of Charlotte continuously since that date, and continues to perform in that capacity.

5. Plaintiff Matthews' resides in Clover, South Carolina which is in York County.

6. Defendant City of Charlotte is a municipality created and functioning under the laws of the state of North Carolina.

FACTS

7. A promotional process for the position of Battalion Chief in the Charlotte Fire Department commenced on December 16, 2015, with the distribution of an Announcement from Deputy Fire Chief Kevin Gordon. A copy of that Announcement is attached hereto as Exhibit A and incorporated by reference.

8. As set out on page 5 of that Announcement: "The 2016-2017 Battalion Chief's Promotional Eligibility Pool will remain in effect from July 1, 2016 through June 30, 2017 or until

the pool is exhausted, whichever comes first.”

9. As set out at page 2 of Exhibit A, the promotional process included a written examination which was conducted on February 2 and 3, 2016.

10. Another part of the promotional process, as set out on page 4 of Exhibit A, was an assessment center which was conducted during the week of April 18-22, 2016.

11. Both Captain Clumpner and Captain Matthews participated in the promotional process, completing both the written test and the assessment center.

12. In early May, 2016, both Captain Clumpner and Captain Matthews received written notifications that they had scored well above the cut-off score required for eligibility to be promoted, on both the written test and the assessment center or operations exercise.

13. Following completion of the written test and the assessment center, each of the candidates that had scored high enough on the exams to be eligible for promotion to Battalion Chief, were apparently interviewed by a panel of the Deputy Chiefs. Both Captain Clumpner and Captain Matthews participated in such interviews.

14. Neither Plaintiff received written notification of the results of the Deputy Chief interview. However, both Captain Clumpner and Captain Mathews were called to a meeting with Deputy Chief of Operations Howard Key, after they had participated in the Deputy Chief interview, and were both informed that they had successfully completed all aspects of the Battalion Chief's promotional process and were in the pool of eligible Battalion Chief candidates.

15. Upon information and belief, none of the candidates found eligible for promotion to Battalion Chief after the Deputy Chief interviews, including candidates actually promoted off of the 2016 - 2017 eligibility list, received written notification of the results of the Deputy Chief interview.

16. Beginning in July, 2016, both Captain Clumpner and Captain Matthews were authorized to serve as acting Battalion Chiefs when there was a need.

17. Beginning in or about July, 2016, both Captain Clumpner and Captain Matthews began regularly serving in the capacity as acting Battalion Chiefs, and have each served approximately 900 hours in that capacity.

18. Deputy Chief of Operations Key has stated that acting as Battalion Chief is a privilege reserved only for those who have successfully completed the promotional process and are on the Battalion Chief promotional list.

19. A number of promotions to Battalion Chief were made from the eligibility list over the last six months of 2016.

20. In December, 2016, due to additional retirements of Chiefs from the Fire Department, several Battalion Chief positions became available. As of that time Captain Clumpner and Captain Matthews were about the only employees remaining on the Battalion Chief promotional eligibility list.

21. Instead of being promoted into the vacant Battalion Chief positions from the eligibility list that was to remain in effect through June 30, 2017, on December 21, 2016, Fire Chief Jon B. Hannan sent Captain Clumpner and Captain Matthews letters informing them that he was terminating the 2016-2017 promotional list and they would not be promoted. Copies of those two letters are attached as Exhibit B and Exhibit C, and incorporated by reference.

22. Chief Hannan's representation in the two letters attached as Exhibits B and C that "the list of candidates recommended by the deputy chiefs has now been exhausted", which implies that neither Captain Clumpner nor Captain Matthews successfully completed the Deputy Chief

interview, is false and inaccurate.

23. The City Council Resolution effective February 5, 1973, found in Resolution Book 9, Page 21, governs the selection and promotion of employees in the Fire and Police Departments. A copy of that resolutions is attached as Exhibit D and incorporated by reference.

24. Chief Hannan's December, 2016 action in removing both Plaintiffs from a promotional list and terminating that list, violated the City Council's February 5, 1973 resolution. Section 6 sub-paragraph 4 of that Resolution gives authority to remove eligible candidates on the promotional list, solely to the Personnel Director, and specifies the particular situations where such removal would be appropriate.

25. None of the situations allowing for the removal of eligible candidates from a promotional list apply to either of the Plaintiffs, at the time that Chief Hannan removed them from the Battalion Chief eligibility list.

26. In removing both Plaintiffs from the Battalion Chief eligibility list and terminating that list, Chief Hannan acted without any involvement of the Personnel Director, Cheryl Brown.

EXHAUSTION OF POTENTIAL REMEDIES

27. On or about January 5, 2017, both Captain Clumpner and Captain Matthews initiated a grievance under the City's grievance procedure to address and correct the violations of the City's policies and procedures, in the denial of promotion to the position of Battalion Chief. Attached as Exhibits E and F are the grievances filed by each of the Plaintiffs. Those exhibits are incorporated by reference.

28. Within a day of filing their grievances, each Plaintiff was informed by City Human Resources that the grievance procedure did not cover their concern. Copies of those notifications are

attached hereto as Exhibits G and H, and incorporated by reference.

29. Both Captain Clumpner and Captain Matthews also initiated an appeal to the Charlotte Civil Service Board. Copies of those two appeals are attached hereto as Exhibits I and J, and incorporated by reference.

30. The Charlotte Civil Service Board discussed those appeals at its meetings held on January 10 and February 7, 2017.

31. In March, 2017, the Charlotte Civil Service Board decided it would not hear Plaintiffs' appeals.

32. Plaintiffs have no other effective remedy to address the City's violation of its own policies and procedures in summarily and arbitrarily terminating the Battalion Chief promotional list on which both Plaintiffs were listed as qualified eligible candidates.

VIOLATION OF RIGHTS UNDER THE CONSTITUTION OF NORTH CAROLINA

33. As set forth in the Announcement of the 2016 Battalion Chief promotional process, "The promotional process is a competitive process based on merit principles." Exhibit A, p. 2.

34. The statement in the Announcement of the promotional process that it is based on "merit principles", is consistent with and required by the Council's February 5, 1973, Resolution. The Resolution provides that "Under the general supervision of the Civil Service Board, the City Personnel Director Shall: . . . (e) develop and administer a plan for promotions which gives appropriate considerations to an applicant's qualifications, record of performance and abilities in relation to the work to be performed." Resolution, Section 3.(5)(e). The Resolution further provides that:

Selection techniques used in the examination process shall be impartial and related to those subjects which fairly measure the relative capacities of the persons examined to execute satisfactorily the duties and responsibilities of the positions open for appointment.

Resolution, Section 5.(1). The Resolution goes on to provide that: “As determined by the Personnel Director, examinations shall consists of selection techniques which will test fairly the qualifications of candidates” Resolution, Section 5.(3).

35. Plaintiffs have a liberty and property interest in being judged for purposes of eligibility for promotion based on their performance and merit as provided by the City’s policy. They also have such interests in the City and its officials following the promotion policies in considering candidates for promotion off of an established promotional list.

36. While under the City’s policies, the Fire Chief may select any of the eligible candidates off of a promotion list, Plaintiffs have the right to equal protection in that they, like all other eligible candidates on a promotional list, shall be able to rely on the list being in effect for the period announced, and to them being considered for promotion from the list when vacancies occur.

37. Article I, Section 1 of the Constitution of North Carolina guarantees Plaintiffs the right to engage in and enjoy the “fruits” of their chosen profession, in this case providing first responder and fire suppression services to communities and their citizens. The right to practice one’s profession includes the right to advance in that profession based on one’s performance and merit.

38. Article I, Section 1 of the Constitution of North Carolina recognizes that “all persons are created equal” and guarantees citizens “the enjoyment of the fruit of their own labor”. This provision has been held to constitute a fundamental right in the ability of citizens to practice their profession or employment.

39. Article I, Section 19 of the Constitution of North Carolina guarantees that no one will be deprived of privileges, liberty or property except by the law of the land; and that no person shall be denied equal protection of the laws. These provisions have been held to provide citizens with the right and protections of substantive due process, as well as equal protection.

40. Article I, Section 35 of the Constitution of North Carolina requires that where the rights of citizens are at stake, a recurrence to fundamental principals is absolutely necessary. Given the matters at stake in this action, such recurrence to fundamental principals is required.

41. The failure and refusal of Defendant City and its officials to follow and comply with the duly enacted policies and resolutions of the City Council regarding promotion processes in the Fire Department, constitutes arbitrary and capricious actions violating the fundamental rights of Captain Clumpner and Captain Matthews as guaranteed by Article I, Sections 1, 19 and 35 of the Constitution of North Carolina.

42. Plaintiffs are entitled to declaratory and injunctive relief for the violation of their constitutional rights, as well as compensatory damages to make them whole. This should include not only promotion to Battalion Chief as of the date that vacancies became available, but also back pay and fringe benefits as well as retroactive seniority as Battalion Chiefs. Additionally, permanent injunctive relief should be granted to require the City and its officials to actually follow and comply with the duly enacted selection and promotional policies that apply to the Fire Department.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Grant a trial by jury on all issues so triable.
2. Declare that the City failed to follow its duly enacted policies and violated the

constitutional rights of Plaintiffs, when on or about December 21, 2016, Plaintiffs were removed from the 2016-2017 Battalion Chief promotional list, the list terminated, and as a result of those violations, Plaintiffs were denied promotions to vacant Battalion Chief positions.

3. Award Plaintiffs back pay consisting of the difference between their salaries as Captains and the salaries that they would have received had they been promoted to Battalion Chief. Such back pay should be retroactive to December 21, 2016, and should include fringe benefits that Plaintiffs would have received based on the increased salary.

4. Grant each Plaintiff seniority as a Battalion Chief, retroactive to December 21, 2016.

5. To the extent that there are vacancies for the position of Battalion Chief currently available, direct that Plaintiffs be immediately placed in those positions.

6. To the extent that there are no vacancies for the position of Battalion Chief, direct that Plaintiffs shall receive the salary of a Battalion Chief, and continue to receive that salary, including any and all salary increases, as if they were Battalion Chiefs, while they continue to perform the duties of a Fire Captain.

7. Direct that Plaintiffs be promoted to the next vacant Battalion Chief positions that become available.

8. Enter permanent injunctive relief requiring that the City and its officials, including but not limited to the Personnel Director and the Fire Chief, comply with all City policies and resolutions regarding selection and promotion of employees in the Fire Department.

9. Grant pre-judgment and post-judgment interest on all compensatory damages awarded, to the maximum extent allowed by law.

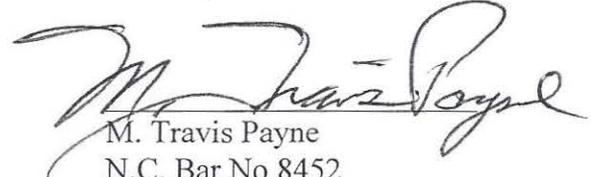
10. Grant Plaintiffs their costs including attorney's fees, incurred in the prosecution of

this action.

11. Grant such other and further relief as the Court deems just and proper.

This the th 20 day of August, 2017.

EDELSTEIN & PAYNE
Attorneys for Plaintiff



M. Travis Payne

N.C. Bar No 8452

Email: eandp@mindspring.com

P.O. Box 28186

Raleigh, N.C. 27611

(919) 828-1456