

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BRIAN McNAMARA,

Plaintiff,

- against -

THE CITY OF LONG BEACH; THE LONG BEACH
VOLUNTEER FIRE DEPARTMENT (LBVFD);
SCOTT KEMINS, in his individual and official capacity;
and JACK SCHNIRMAN, in his individual and
official capacity,

Defendants.
-----X

No.: _____

VERIFIED COMPLAINT

Jury Trial Demanded

Plaintiff, BRIAN McNAMARA (“Plaintiff” or “McNamara”), by and through his attorneys, The Law Office of Steven A. Morelli, P.C., respectfully alleges, upon knowledge as to himself and his own actions and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT:

1. Plaintiff was employed by the City of Long Beach (“City”) as a firefighter within the paid ranks of the Long Beach Fire Department (“LBFD”) for 9 years. He has fulfilled his duties in an exemplary manner and has received awards and commendations for his work. Plaintiff was, at all times relevant to this matter, the Secretary, and a member of the Executive Board, of the Long Beach Professional Firefighters Association, LAFF LOCAL 287 (“LBPFA” or “Union”).
2. Plaintiff has been subjected to a pattern of harassment and discrimination in retaliation for his activities on behalf of the Union and its members, constituting multiple acts of retaliation for having exercised constitutionally protected rights of Speech and Assembly.
3. This action is brought under the First Amendment of the United States Constitution

pursuant to 42 U.S.C. § 1983, and also contains any other cause of action which can reasonably be inferred from the facts set forth herein, to redress violations of Plaintiff's rights as guaranteed by the laws of the United States and the United States Constitution.

JURISDICTION AND VENUE:

4. This Court has original jurisdiction over Plaintiffs' federal law claims pursuant to 28 U.S.C. §§ 1331 & 1343.
5. Venue is proper pursuant to 28 U.S.C. § 1391 because (1) the Defendants are located in Nassau County, New York, which is located in the Eastern District of New York, and (2) the events which give rise to Plaintiff's claims took place in Nassau County, which is located in the Eastern District of New York.

PARTIES

6. Plaintiff, BRIAN McNAMARA, is a resident and domiciliary of Nassau County, New York, with a home address of 42 Vermont St., Long Beach, NY 11561, and was at all relevant times employed by the CITY as a firefighter within the paid ranks of the Long Beach Fire Department. At all times relevant to this matter Plaintiff was the Secretary, and a member of the Executive Board, of the Long Beach Professional Firefighters Association, LAFF LOCAL 287.
7. Defendant, THE CITY OF LONG BEACH ("City"), is a government agency located at 1 Westchester St., Long Beach, NY 11561.
8. Defendant, The LONG BEACH VOLUNTEER FIRE DEPARTMENT ("LBVFD"), is a municipal agency and a part of the City, with a primary address located at P.O. Box 53,

Long Beach, NY 11561.

9. Defendant, SCOTT KEMINS (“Kemins”), is a Commissioner for the City;
10. Defendant, JACK SCHNIRMAN (“Schnirman”), City Manager, located at 1 West Chester St., Long Beach, NY 11561.

FACTUAL ALLEGATIONS:

11. Plaintiff, a veteran, husband and father, has been employed as a paid firefighter by the Long Beach Fire Department (hereinafter “LBFD”) for 9 years, having been first hired in September 2005.
12. The City operates both the LBFD as a paid professional firefighting force, and the LBVFD as a volunteer firefighting force.
13. Plaintiff is the Secretary and a member of the Executive Board of the LBPFA. The LBPFA is a duly formed labor organization (Union) that represents the paid members of the LBFD. Plaintiff continued to be a member of the LBPFA and served as its Secretary until the time of his termination. Plaintiff held the position of Secretary for approximately four years, having been first elected in December, 2010, and having first taken office in January 2011.
14. As Secretary of the LBPFA, Plaintiff was responsible for taking minutes during monthly meetings, handling communications within the Union among members, coordinating training and seminar attendance/availability with local members and larger Union entities such as the state and international Fire Fighters Associations. Plaintiff also created a website that aired some of his concerns with the general structure of the LBVFD. Plaintiff also authored an article that appeared in Newsday about union firefighter’s

“saves” as part of his role as Secretary.

15. The volunteers and officers of the Long Beach Volunteer Fire Department (hereinafter “LBVFD”) are not members of the LBPFA.
16. There is a well-established history of animosity and contempt directed toward the members of the LBPFA by the members of the LBVFD. This animosity and contempt has been exhibited by both the rank and file membership of the LBVFD as well as those comprising its leadership, including Plaintiff.
17. In 2014, Plaintiff was to be given an award at an official LBFD event (referred to as the “Installation and Awards Dinner”) on May 10, 2014, for having saved a life in the performance of his duties.
18. Despite the fact that Plaintiff was due to receive an award at the installation dinner, he and one other paid Union-member firefighter were not invited to the dinner.
19. Two days prior to the announcement of the dinner, Plaintiff had gone to the site of a fire response by the LBVFD to videotape the incident. Plaintiff conducted these activities as part of his responsibilities as an officer of the Union.
20. Plaintiff was excluded from invitation to the dinner by then-Chief Corbett as retaliation for having videotaped the performance of members of the LBVFD.
21. Plaintiff realized that he was being excluded from the dinner, and on April 27, 2014 Plaintiff emailed Executive Officer Anthony Fallon, William Ryan, Bill Piazza and Brian Pues to ask why he had not been invited as he had been in past years. Plaintiff questioned whether his exclusion from the event was “some sort of secret department punishment” and stated that it was “embarrassing to be excluded from an official LBFD event that all your coworkers have been invited [to].”

22. Corbett received a copy of the email and was called by Piazza to question him about the matter. Under pressure, Corbett agreed to extend an invitation to Plaintiff for the event. Corbett stated to Workplace Security Coordinator Robin Lynch (“Lynch”) that he initially excluded McNamara due to Plaintiff’s “internet postings” and hostilities between McNamara and the volunteer fire fighters.
23. Plaintiff attended the installation dinner, at which time he was awarded for his service.
24. The City had supplied buses for the installation dinner that were designed to transport guests safely home within the city limits. Plaintiff, as a guest, attempted to board one of the buses to return home. When he tried to board the taxpayer-funded bus, he was physically prevented from entering the bus by two volunteer firefighters, James Jacobi (“Jacobi”) and Richard DiGiacomo (“DiGiacomo”).
25. DiGiacomo told Plaintiff in no uncertain terms that Plaintiff was “not welcome” on the bus. DiGiacomo placed his hand on Plaintiff’s chest to prevent him from boarding.
26. While Plaintiff was attempting to access the bus to join the people he was trying to leave with, both DiGiacomo and Jacobi shouted at Plaintiff, threatening Plaintiff with harm if he entered the bus, and insulting his abilities as a firefighter. As a result, a verbal altercation ensued between Plaintiff, Jacobi and DiGiacomo. At one point, Plaintiff said that at the last fire Jacobi was “walking around aimlessly” and not helping, which enraged Jacobi. Jacobi physically attacked Plaintiff and needed to be restrained from inflicting physical bodily harm on Plaintiff.
27. In light of Jacobi’s physical violence, Plaintiff withdrew from the situation and was driven home by coworker Christopher Gormley and Gormley’s wife.
28. During the the Installation and Awards Dinner, an invitation was extended to all

attendee's to attend a post-dinner party at Station 2 (also known as the "West End" or "Indiana" firehouse). Station 2 is wholly owned by the CITY and is operated for the benefit, and at the expense of, the taxpayers of the City. All members of the LBFD and LBVFD, including Plaintiff, have unrestricted access to all LBFD firehouses, including Station 2.

29. Believing that other LBPFA members would be present at the party, Plaintiff decided to attend the party at Station 2.
30. Having first gone home and changed out of his Class 'A' uniform and into civilian garb, Plaintiff walked to Station 2.
31. Given the prior assault, Plaintiff, exercising an abundance of caution, prudently decided to carry with him a digital audio recorder that was operating at the time he entered Station 2.
32. Plaintiff walked into the "den" (a back area of Station 2) and was immediately confronted by an enraged Jacobi, who yelled "are you out of your fucking mind?" at the Plaintiff. Plaintiff and Jacobi again had a verbal altercation, and Plaintiff was attacked by several members of the LBVFD. DiGiacomo and Hadrick Ray ("Ray"), another member of the LBVFD, grabbed and held Plaintiff, while Jacobi and Justin Fitzmartin (another member of the LBVFD) ("Fitzmartin") struck Plaintiff multiple times.
33. Ray stepped in to shield Plaintiff from further assault, and pulled Plaintiff with other unknown persons down a stairwell to remove Plaintiff from the violence. Jacobi pursued Plaintiff and was screaming obscenities and swinging at Plaintiff. DiGiacomo also followed and struck Plaintiff's face as Plaintiff was being forced into the stairwell. Plaintiff was being "manhandled" and forced down the stairs onto the back deck (an

enclosed outdoor space behind Station 2) where DiGiacomo stated that Plaintiff was “not welcome” at the Firehouse. Plaintiff asked why he was prevented from getting on the bus earlier in the evening and DiGiacomo said it was because the Plaintiff had recorded earlier fires and now the volunteers were going to “fuck with” him in retaliation. DiGiacomo again punched the Plaintiff, causing Plaintiff to fall to the ground. While on the ground, Plaintiff was kicked and struck by one or more unknown individuals.

34. Plaintiff was ultimately able to reach the exit of Station 2 and escape his assault.
35. Plaintiff sustained abrasions to his shoulder, endured blows that caused pain in his knees, neck and back, and suffered a pooling of blood under his eye and bruising to his left eye.
36. This assault was directly witnessed by Joseph Miller, member of the LBVFD and a Nassau County Police Officer (“Miller”). Miller failed to intervene into the commission of a crime occurring in his presence, and moreover, actually encouraged and openly condoned the attack.
37. This assault was directly witnessed by Keith Hollingshead, a member of the LBVFD and a Nassau County Corrections Officer (“Hollingshead”). Hollingshead failed to intervene into the commission of a crime occurring in his presence, and moreover, actually encouraged and openly condoned the attack.
38. Plaintiff called Executive Officer Fallon to report the incident shortly after 1:00 a.m. on May 11, 2014. Later that same day, Plaintiff called Executive Officer Fallon again. Executive Officer Fallon informed Plaintiff that he had spoken with Defendant, Commissioner Kemins, about the matter, and Kemins told Fallon that he “just want(ed) the matter to go away.” Plaintiff told Fallon that he intended to follow up on the matter in accord with the Workplace Violation Prevention Act (“WPVA”).

39. On May 12, 2014, Plaintiff was summoned by Lynch for an interview. Plaintiff believed at that time that she intended to interview him as a victim of the events of early May 11, 2014.
40. Upon arriving at Lynch's office, Plaintiff learned that a Workplace Violence Prevention Complaint had in fact been filed against Plaintiff by Miller. Plaintiff explained his complaint to Fallon, and Lynch indicated no knowledge of the complaint. Plaintiff filed a written complaint regarding the events of early May 11, 2014 on the afternoon of May 12, 2014. Going forward, Lynch treated Plaintiff's complaint as having been made subsequent to Miller's.
41. On or around June 6, 2014, Defendant Kemins served Plaintiff with disciplinary charges arising out of the incidents on May 10 and 11, 2014, and suspended Plaintiff without pay.
42. On July 9, 2014, the City again served Plaintiff with disciplinary charges and suspended Plaintiff without pay, allegedly for a disrespectful e-mail.
43. On August 7, 2014, the City again served Plaintiff with disciplinary charges and suspended Plaintiff without pay, allegedly for failing to turn over the recording of the events of May 11, 2014.
44. Following a hearing over several days, in which several witnesses for the City gave false testimony, Plaintiff was terminated from his position by the Hearing Officer, Defendant and City Manager Jack Schnirman, by decision dated December 30, 2014.
45. As a result of Defendants' actions, Plaintiff has suffered physical pain and suffering, debilitating emotional harm, stress, and crippling psychological trauma.
46. Defendants actions as to the Plaintiff were motivated by animus and retaliatory intent, in response to Plaintiff's exercise of his rights of speech and assembly as a citizen and

officer of his Union, as guaranteed by the United States Constitution.

CLAIMS FOR RELIEF:

FIRST CAUSE OF ACTION

(First Amendment Retaliation – Free Speech)

47. By reason of the foregoing, the Defendant has unlawfully retaliated against the Plaintiff and deprived him of his rights guaranteed by the Constitution of the United States, by depriving him of his liberty and property interests due to his constitutionally protected activities in speaking out on issues of public concern in the course of his duties as a citizen and as an officer of a labor union pursuant to the First Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION

(First Amendment Retaliation - Assembly)

48. By reason of the foregoing, Defendants have unlawfully retaliated against the Plaintiff and deprived him of his rights guaranteed by the Constitution of the United States, by depriving him of his liberty and property interests due to his constitutionally protected activities in free assembly as part of a labor union, pursuant to the First Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983.

DEFENDANT'S LIABILITY:

49. Defendants, while acting under the color of law, deprived the Plaintiff of all the above-mentioned constitutional rights in that Defendants intentionally committed, condoned or were deliberately indifferent to the aforementioned violations of the Plaintiff's rights. Such deliberate indifference may be inferred in the following ways:

- a. Defendants' custom or practice of depriving the Plaintiff of the aforementioned constitutional rights. These practices were so persistent

and wide spread that they constitute the constructive acquiescence of policy makers;

- b. Inadequate training/supervision was likely to result in such violations that policymakers can reasonably be said to have been deliberately indifferent to the need to provide better training and supervision; and
- c. Policymakers engaged in and/or tacitly condoned the deprivations.

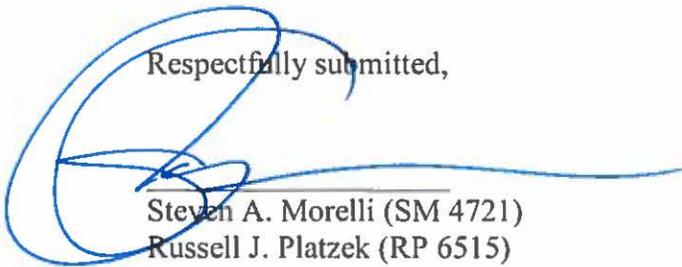
WHEREFORE, the Plaintiff demands judgment against Defendants for all compensatory, emotional, and psychological damages, injunctive relief, and any other damages permitted by law pursuant to the above-referenced causes of action in an amount to be determined by a jury. It is respectfully requested that the Court grant the Plaintiff any other relief to which the Plaintiff is entitled, including but not limited to:

- a. Awarding reasonable attorneys fees and costs and disbursements of this action;
- b. Granting all other and further relief, equitable or otherwise, to which Plaintiff is entitled and/or which to the Court seems just and proper.

Further, Plaintiff demands a trial by jury.

Dated: Garden City, New York
March 7, 2016

Respectfully submitted,

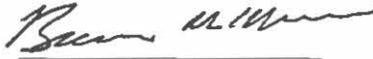


Steven A. Morelli (SM 4721)
Russell J. Platzek (RP 6515)
THE LAW OFFICE OF
STEVEN A. MORELLI, P.C.
990 Stewart Avenue, Suite 130
Garden City, New York 11530
(516) 393-9151
F: (516) 280-7528

VERIFICATION

State of New York)
) ss:
County of Nassau)

BRIAN MCNAMARA, being duly sworn, deposes and says that deponent is the claimant in the within action; that he has read the forgoing Verified Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matter therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.



BRIAN McNAMARA

Sworn to before me this
7th day of March, 2016:



Notary Public

