

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

<p>FIRE FIGHTER LAUREANO AVILA-MORA, 9512 Silas Drive Nokesville, VA 20181</p> <p>FIRE FIGHTER ANDREW BROWN, 7 Black Forest Lane Lovettsville, VA 20180</p> <p>FIRE FIGHTER HANH DENISTON, 1116 Oakwood Drive Colonial Heights, VA 23834</p> <p>CAPTAIN JEFFREY FERFOLIA, 609 Johnston Place Alexandria, VA 22301</p> <p>FIRE FIGHTER KENDRA HOWEY, 130 Montandon Lane Berkeley Springs, WV 25411</p> <p>FIRE FIGHTER SHAWN LYNCH, 311 Saint Andrews Lane Westminster, MD 21158</p> <p>CAPTAIN JOSEPH SCARPONE, 3574 S Stafford St Arlington, VA 22206</p> <p>MASTER FIRE FIGHTER MATTHEW WESCHLER, and 6825 Winona Place Hughesville, MD 20637</p> <p>MASTER FIRE FIGHTER DAVID WIELGOSZ</p>	<p>CIVIL ACTION NO. 1:22-cv-1046</p> <p>JURY TRIAL DEMANDED</p>
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6921 Quail Run
Hurlock, MD 21643

Plaintiffs,

v.

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY,

1 Aviation Circle
Washington, DC 20001

FIRE CHIEF DENISE POUGET (In her official
and individual capacity),

1 Aviation Circle
Washington, DC 20001

ASSISTANT FIRE CHIEF STEVEN GERVIS
(In his official and individual capacity), and

1 Aviation Circle
Washington, DC 20001

ASSISTANT FIRE CHIEF DANIEL REDMAN
(In his official and individual capacity)

1 Aviation Circle
Washington, DC 20001

Defendants.

COMPLAINT FOR VIOLATION OF FIRST AMENDMENT RIGHTS

Plaintiffs, employed as fire fighters by the Metropolitan Washington Airports Authority (“MWAA”) in the Washington Airports Authority Fire & Rescue Department (“FRD”) at Reagan Washington National Airport and Dulles International Airport and members of the International Association of Fire Fighters (“IAFF” or “Union”) and Officers and Executive Board Members of

IAFF Local 3217 MWAA Professional Firefighters (“Local 3217”), by and through counsel, hereby state as follows:

INTRODUCTION

The First Amendment to the United States Constitution provides that “Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people to peaceably assemble.” U.S. Const. Amend. I. The Fourteenth Amendment to the United States Constitution makes this prohibition applicable to the states. Moreover, the First Amendment protects not only the affirmative right to speak, but also the equally important right to be free from retaliation by public officials for the exercise of that right. Likewise, the state cannot take action that effectively chills an individual’s First Amendment rights.

To inform the public of safety concerns over the staffing levels of fire fighters at MWAA’s airports, and to publicize their labor dispute with FRD management, Plaintiffs, in their capacity as Local 3217 Officers and Executive Board Members, drafted a resolution censuring MWAA Vice President of Public Safety Bryan Norwood, FRD Fire Chief Denise Pouget, FRD Assistant Chief Daniel Redman, and FRD Assistant Chief Steven Gervis. Plaintiffs then introduced the censure resolution at the IAFF’s 56th Convention where it was approved unanimously in August 2022.

Plaintiffs intended to send the censure resolution to the MWAA Board of Directors; MWAA President and CEO John E. Potter; the appointers of the MWAA Board of Directors – President Joseph R. Biden, Maryland Governor Larry Hogan, Virginia Governor Glenn Youngkin and Mayor of the District of Columbia Muriel Bowser; the Mayor of Alexandria City; the Chairman of the Board for Arlington, Fairfax and Loudoun Counties; The Board of Supervisors for Arlington, Fairfax and Loudoun Counties; and the City Council of Alexandria. Plaintiffs also

intended to publicize the censure resolution, their labor dispute, and their public safety concerns to a reporter from The Washington Post.

Defendants Pouget, Gervis and Redman have undertaken a campaign of terror in an effort to silence the Plaintiffs from continuing to exercise their First Amendment free speech rights to speak on matters of public concern and to retaliate against them for exercising their First Amendment free speech rights to date. First, in response to learning about the Plaintiffs drafting a censure resolution, Pouget, Gervis and/or Redman filed an anonymous workplace complaint against Local 3217 President Shawn Lynch and Vice President Hanh Deniston over “IAFF Complaints” that has led to a disciplinary investigation by an outside legal counsel. Then, once the censure resolution was approved at the IAFF Convention, Pouget, Gervis and Redman responded by threatening a frivolous defamation lawsuit against the Plaintiffs. These retaliatory actions have had the effect of chilling the Plaintiffs’ right to engage in First Amendment protected speech and activity.

Consequently, Plaintiffs seek the Court’s intervention to ensure that they can exercise their rights guaranteed under the First Amendment without retaliation or threats of economic harm. This relief includes a permanent injunction enjoining Defendants from retaliating against, intimidating or taking adverse employment actions against Plaintiffs for exercising their constitutional free speech rights, as well enjoining Defendants from pursuing a retaliatory disciplinary investigation against Plaintiffs Lynch and Deniston.

Jurisdiction and Venue

1. This action arises under the First and Fourteenth Amendments of the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988.

2. This Court has original jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343; the requested declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-02; and costs and attorneys' fees under 42 U.S.C. § 1988.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the retaliatory and chilling conduct of Defendants took place in this district.

Parties

4. Plaintiff Laureano Avila-Mora is employed as a fire fighter with FRD and is a Vice President of Local 3217. Mr. Avila-Mora resides at 9512 Silas Drive, Nokesville, VA 20181.

5. Plaintiff Andrew Brown is employed as a fire fighter with FRD and is an Executive Board Member of Local 3217. Mr. Brown resides at 7 Black Forest Lane, Lovettsville, VA 20180.

6. Plaintiff Hanh Deniston is employed as a fire fighter with FRD and is a Vice President of Local 3217. Mr. Deniston resides at 1116 Oakwood Drive, Colonial Heights, VA 23834

7. Plaintiff Kendra Howey is employed as a fire fighter with FRD and is an Executive Board Member of Local 3217. Ms. Howey resides at 130 Montandon Lane, Berkeley Springs, WV 25411

8. Plaintiff Jeffrey Ferfolia is employed as a Captain with FRD and is an Executive Board Member of Local 3217. Mr. Ferfolia resides at 609 Johnston Place, Alexandria, VA 22301

9. Plaintiff Shawn Lynch is employed as a fire fighter with FRD and is the President of Local 3217. Mr. Lynch resides at 311 Saint Andrews Lane, Westminster, MD 21158.

10. Plaintiff Joseph Scarpone is employed as a Captain with FRD and is an Executive Board Member of Local 3217. Mr. Scarpone resides at 3574 S Stafford St, Arlington, VA 22206.

11. Plaintiff Matthew Weschler is employed as a master fire fighter with FRD and is an Executive Board Member of Local 3217. Mr. Weschler resides at 6825 Winona Place, Hughesville, MD 20637

12. Plaintiff David Wieglosz is employed as a master fire fighter with FRD and is an Executive Board Member of Local 3217. Mr. Wieglosz resides at 6921 Quail Run, Hurlock, MD 21643.

13. Defendant Metropolitan Washington Airports Authority (“MWAA”) is a public body created and given authority by legislative action of Virginia, the District of Columbia, and Congress. *See* D.C. Code §§ 9-901 *et seq.*; Va. Code §§5.1-152 *et seq.*; 49 U.S.C. § 49104 *et seq.* MWAA is “independent of Virginia and its local governments, the District of Columbia, and the United States Government.” 49 U.S.C. § 49106(a)(2). It is “a political subdivision constituted only to operate and improve the Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.” *Id.* § 49106(a)(3). The MWAA is a municipality. It is located at 1 Aviation Circle, Washington, DC 20001. Defendant MWAA operates the Washington Airports Authority Fire & Rescue Department (“FRD”) which provides fire and public safety services at Reagan Washington National Airport, 2401 Smith Boulevard, Arlington, Virginia 22202 and Dulles International Airport, 1 Saarinen Circle, Dulles, Virginia 20166. MWAA operates out of offices located at operates out of 1 Aviation Circle, Washington, DC 20001.

14. Defendant Denise Pouget is the Fire Chief of the MWAA FRD. In her role as the MWAA FRD Fire Chief, Defendant Pouget is a public official. Plaintiffs bring their claims against Defendant Pouget in her official and individual capacity. Ms. Pouget operates out of offices located at 1 Aviation Circle, Washington, DC 20001.

15. Defendant Steven Gervis is the Assistant Fire Chief of the MWAA FRD. In his role as the MWAA FRD Assistant Fire Chief, Defendant Gervis is a public official. Plaintiffs bring their claims against Defendant Gervis in his official and individual capacity. Mr. Gervis operates out of offices located at 1 Aviation Circle, Washington, DC 20001.

16. Defendant Daniel Redman is the Assistant Fire Chief of the MWAA FRD. In his role as the MWAA FRD Assistant Fire Chief, Defendant Redman is a public official. Plaintiffs bring their claims against Defendant Redman in his official and individual capacity. Mr. Redman operates out of offices located at 1 Aviation Circle, Washington, DC 20001.

Factual Background

17. The IAFF is an international labor union with more than 330,000 members engaged in fire fighting, emergency medical or rescue service activities, or related services throughout the United States and Canada.

18. Two significant goals of the IAFF and its affiliates are to educate the public on all matters relating to fire and emergency services, while advocating for improvements in these and all related areas.

19. One way in which these goals are met is through ongoing communication with the communities served by IAFF affiliates and the greater public on matters of concern, including public safety and other related issues.

20. IAFF affiliates, such as Local 3217, use the Union's censure resolution process to communicate their concerns relating to management of fire and emergency services, as well as related public safety issues.

21. The resolution process includes an initial draft by the involved IAFF affiliate. The draft resolution is then submitted to the IAFF for review and revision in consultation with its legal

counsel. The resolution review process includes confirming that documentation and other information provide support for any factual allegations being made in the resolution.

22. After the resolution review process, a final version of the resolution is prepared for approval by the IAFF affiliate.

23. Thereafter, the proposed resolution is presented for consideration by a resolutions committee comprised of representatives from IAFF affiliates at the IAFF Convention. The resolutions committee prepares a report with a recommendation as to whether the resolution should be adopted by the IAFF through a vote of the Union's delegates at the IAFF Convention.

24. All adopted resolutions are subsequently published in the IAFF monthly magazine to communicate the resolution's message to the IAFF membership, the communities served by the IAFF affiliates and to the general public.

25. In addition, the IAFF affiliate that submits the resolution may also include specific persons, entities and/or organizations to which the resolution should be sent as a further means to effectively communicate the message contained in the resolution.

26. The IAFF conducted its 56th Convention on August 8-12, 2022, in Ottawa, Ontario, Canada.

27. In the months preceding the Union's Convention, IAFF affiliates, including IAFF Local 3217, drafted and submitted proposed resolutions that were reviewed in the manner discussed above and eventually presented to the IAFF delegates at the Convention to consider and vote on whether to adopt the resolutions. A copy of the Resolution submitted by Local 3217 and approved at the IAFF Convention ("Local 3217 Resolution") is attached hereto as Exhibit A.

28. The Local 3217 Resolution, which Plaintiffs assisted in preparing, addressed several public safety concerns with respect to the operations of the FRD under the leadership of

Defendants: Fire Chief Denise Pouget and Assistant Fire Chiefs Daniel Redman and Steven Gervais.

29. Specifically, the Local 3217 Resolution focused on concerns over staffing shortages and how these shortages adversely impacted the safety of the general public and fire fighters represented by Local 3217 and negatively affected the level of service and standard of care provided by the FRD.

30. The Local 3217 Resolution specifically indicated that several individuals and/or entities should be notified of the resolutions and the concerns contained therein, including Defendants, all affiliates of the IAFF, the MWAA Board of Directors, the MWAA President and CEO, the appointees of the MWAA Board of Directors, President of the United States, Joseph R. Biden, Maryland Governor Larry Hogan, Virginia Governor Glenn Youngkin and Mayor of the District of Columbia Muriel Bowser.

31. The Local 3217 Resolution also indicated that the following entities should be notified of the resolution and the concerns contained therein: The Mayor of Alexandria City, the Chairman of the Board for Arlington, Fairfax and Loudoun Counties, the Board of Supervisors for Arlington, Fairfax and Loudoun Counties and the City Council of Alexandria, as well as the AFL-CIO Executive Committee and the International Association of Fire Chiefs (IAFC).

32. Upon learning that the Plaintiffs had drafted the resolution, Defendant Redman told a Local 3217 bargaining unit member who was also the spouse of a Local 3217 Executive Board member that the Local 3217 Executive Board was going to have to answer for the resolution. Defendant Redman also suggested that there would be work related ramifications as a result of the resolution.

33. Immediately subsequent to this threatening statement, upon information and belief, Pouget, Gervis and/or Redman submitted an anonymous, baseless workplace harassment and hostile work environment complaint to MWAA against Plaintiffs Lynch and Deniston because they drafted and supported the resolution.

34. After the Local 3217 Resolution was approved at the IAFF Convention but before the resolution could be published in the IAFF magazine or distributed to the individuals and entities named above, Defendants sent a letter dated August 31, 2022, through legal counsel, to Plaintiffs, as well as other IAFF representatives, threatening them with a lawsuit for defamation and unidentified “other torts” over the introduction and adoption of the Local 3217 Resolution at the IAFF Convention. A copy of the August 31, 2022, letter is attached hereto as Exhibit B.

35. In their August 31st letter, Defendants demanded that the Local 3217 Resolution be retracted and removed from wherever it had been published. Defendants also demanded a formal apology and retraction online, electronically and in writing. Finally, Defendants demanded that all the entities discussed above who were notified of the Local 3217 Resolution be provided a copy of the apology and retraction.

36. When they made this threat of litigation, Defendants knew or reasonably should have known that nothing in the Local 3217 Resolution was false or defamatory.

37. Two days after Defendants’ letter threatening Plaintiffs with litigation, an outside legal counsel sent letters to Plaintiffs Lynch and Deniston notifying them that they were conducting a disciplinary investigation into the workplace harassment and hostile workplace complaint that was filed against them. As further evidence that the anonymous complaint was filed by Pouget, Gervis and/or Redman, the subject matter of the investigation by the outside counsel were the “IAFF Complaints” and MWAA had never hired an outside legal counsel to

conduct a workplace complaint at FRD before, indicating that the complaint was filed by high-level FRD management employees Pouget, Gervis and/or Redman. Thus, Defendants' baseless complaint has led to an unwarranted investigation of Plaintiffs by outside legal counsel and the further threat of discipline. A copy of the letter notifying Lynch and Deniston of the investigation by outside legal counsel is attached hereto as Exhibit C.

38. Through counsel, Plaintiffs responded to Defendants' August 31, 2022, letter and their subsequent anonymous complaint in a September 8, 2022 letter. A copy of this letter is attached hereto as Exhibit D.

39. In their September 8th letter, Plaintiffs objected to Defendants' blatant and unlawful threats to retaliate against them for exercising their First Amendment right to speak out on matters of public concern and efforts to silence them from exercising this right in the future. Plaintiffs demanded that Defendants certify in writing that they would not take any legal action against any IAFF or Local 3217 officer over the Local 3217 Resolution. Plaintiffs also demanded that Defendants withdraw the baseless workplace complaint against Plaintiffs Lynch and Deniston. Defendants have refused Plaintiffs' demands.

Count I – Violation of Plaintiffs' Rights to Free Speech Under the First and Fourteenth Amendments (42 U.S.C. § 1983) - Retaliation

40. Plaintiffs reallege and incorporate Paragraphs 1 through 39.

41. Through their conduct, Defendants unlawfully retaliated against Plaintiffs in response to the Local 3217 Resolution.

42. The Local 3217 Resolution constitutes constitutionally protected speech because it involved matters of public concern over staffing shortages and how these shortages adversely impacted the safety of the general public and fire fighters represented by Local 3217 and negatively affected the level of service and standard of care provided by the FRD.

43. Defendants' threats against Plaintiffs, including the threat of ramifications because of the Local 3217 Resolution, the threat of a lawsuit for defamation and other torts if the Local 3217 Resolution was not retracted and an apology issued by Plaintiffs, and the anonymous workplace complaint made by Defendants against Plaintiffs Lynch and Deniston leading to a disciplinary investigation, was in response to Plaintiffs' constitutionally protected speech.

44. In threatening to take and taking these actions against Plaintiffs, Defendants acted under color of state law in that they sought to use their positions as high level FRD officials to silence and chill the Plaintiffs' constitutionally protected speech.

45. Defendants' threats against Plaintiffs, including the threat of ramifications because of the Local 3217 Resolution, the threat of a lawsuit for defamation and other torts if the Local 3217 Resolution was not retracted and an apology issued by Plaintiffs, and the anonymous workplace complaint made by Defendants against Plaintiffs Lynch and Deniston have adversely affected Plaintiffs' constitutionally protected speech and willingness to exercise that constitutionally protected speech in the future.

46. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiffs have suffered, and continue to suffer, a deprivation of their constitutionally protected rights, economic injury, and irreparable harm.

47. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiffs have suffered, and continue to suffer, mental and emotional distress, humiliation, anxiety, embarrassment, and discomfort.

Count II – Violation of Plaintiffs' Rights to Free Speech Under the First and Fourteenth Amendments (42 U.S.C. § 1983) – Chilling of Constitutionally Protected Speech

48. Plaintiffs reallege and incorporate Paragraphs 1 through 47.

49. Through their conduct in response to the Local 3217 Resolution, Defendants unlawfully chilled Plaintiffs' freedom of speech rights.

50. The Local 3217 Resolution constitutes constitutionally protected speech because it involved matters of public concern over staffing shortages and how these shortages adversely impacted the safety of the general public and fire fighters represented by Local 3217 and negatively affected the level of service and standard of care provided by the FRD.

51. Defendants' threats against Plaintiffs, including the threat of ramifications because of the Local 3217 Resolution, the threat of a lawsuit for defamation and other torts if the Local 3217 Resolution was not retracted and an apology issued by Plaintiffs, and the anonymous workplace complaint made by Defendants against Plaintiffs Lynch and Deniston adversely affected Plaintiffs' constitutionally protected speech and willingness to exercise that constitutionally protected speech in the future.

52. In threatening to take and taking the actions against Plaintiffs, Defendants acted under color of state law in that they sought to use their positions as high level FRD officials to silence and chill the Plaintiffs' constitutionally protected speech.

53. Defendants' threats against Plaintiffs, including the threat of ramifications because of the Local 3217 Resolution, the threat of a lawsuit for defamation and other torts if the Local 3217 Resolution was not retracted and an apology issued by Plaintiffs, and the anonymous workplace complaint made by Defendants against Plaintiffs Lynch and Deniston were in response to the statements made in the Local 3217 Resolution and served to chill and intimidate Plaintiffs into silence.

54. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiffs have suffered, and continue to suffer, a deprivation of their constitutionally protected rights, economic injury, and irreparable harm.

55. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiffs have suffered, and continue to suffer mental and emotional distress, humiliation, anxiety, embarrassment, and discomfort.

Count III – Declaratory Judgment and Injunction (28 U.S.C. § 2201 *et seq.*)

56. Plaintiffs repeat and reallege Paragraphs 1 through 55.

57. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time as to Count I and II, above.

58. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs' rights to speak about matters of public concern without being subject to retaliation, intimidation, or adverse employment actions.

59. To prevent further violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant to 28 U.S.C § 2201 and Fed. R. Civ. P. 57, declaring Defendants' actions unconstitutional.

60. Pursuant to 28 U.S.C § 2202 and Fed. R. Civ. P. 65, this Court should issue a permanent injunction enjoining Defendants from retaliating against, intimidating or taking adverse employment actions against Plaintiffs as a result of the Local 3217 Resolution. Defendant MWAA should also be enjoined for continuing the disciplinary investigation based on the meritless, retaliatory anonymous complaint made by Defendants against Plaintiffs Lynch and Deniston.

WHEREFORE, Plaintiffs request a judgment against Defendants as follows:

1. A declaration stating that Defendants' actions violated Plaintiffs' right to free speech on matters of public concern.
2. A permanent injunction enjoining Defendants from retaliating against, intimidating or taking adverse employment actions against Defendants as a result of the Local 3217 Resolution.
3. Monetary damages in an amount to be determined by the Court to compensate Plaintiffs for the deprivation of fundamental rights.
4. Plaintiffs' reasonable attorneys' fees, costs and disbursements in this action pursuant to 42 U.S.C. §§ 1988.
5. Award such other relief as the Court deems just and proper.

JURY DEMAND: PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL

COUNTS SO TRIABLE

Respectfully Submitted,

/s/ John R. Mooney
John R. Mooney (VA Bar No. 22212)
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/s/ Mark J. Murphy
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mmurphy@mooneygreen.com
Pro Hac Vice application to be submitted

Counsel for Plaintiffs

Dated: September 13, 2022

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Fire Fighter Laureano Avila-Mora, et al.

(b) County of Residence of First Listed Plaintiff Prince William
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mooney, Green, Saindon, Murphy, & Welch, P.C.
1920 L Street NW, Suite 400, Washington, DC 20036
(202) 782-0040

DEFENDANTS

Metropolitan Washington Airports Authority, et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☒ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant

☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) _____ ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
First and Fourteenth Amendments of the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988

Brief description of cause:
Suit to enjoin Defendants from retaliating, intimidating, or taking adverse employment action against Plaintiffs for exercising free speech rights

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 9/13/2022 SIGNATURE OF ATTORNEY OF RECORD: /s/ John R. Mooney

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A

Revised Resolution No. 36

COMMITTEE ASSIGNMENT: Resolutions

**Re: Censure of MWAA Vice President of Public Safety
Bryan Norwood, Fire Chief Denise Pouget,
Assistant Chief Daniel Redman, and Assistant
Chief Steven Gervis**

1 WHEREAS, IAFF Local 3217 represents
2 the professional fire fighters in the Washington
3 Airports Authority Fire & Rescue Department
4 (FRD) who protect and serve the citizens and
5 residents of the entire United States and its
6 international visitors who use Dulles International
7 Airport (IAD) and Reagan National Airport
8 (DCA); and

9 WHEREAS, the governing body of IAD and
10 DCA is the Metropolitan Washington Airports
11 Authority (MWAA); and

12 WHEREAS, MWAA Vice President for
13 Public Safety Bryan Norwood, Chief Denise
14 Pouget, Assistant Chief Daniel Redman and
15 Assistant Chief Steven Gervis have failed to
16 communicate with IAFF Local 3217 leadership,
17 failed to respond to requests, and failed to
18 respond to grievances presented and
19 communicated on behalf of the professional fire
20 fighters represented by IAFF Local 3217; and

21 WHEREAS, Bryan Norwood and Chief
22 Denise Pouget have engaged in excessive
23 discipline of IAFF Local 3217's members – such
24 as demoting a member for failing to clean a
25 helmet and suspending a member against the
26 recommendation of the Vehicle Accident Review

27 Board – all of which the Union has grieved and
28 had reversed, and Bryan Norwood and Chief
29 Denise Pouget have used profanity and other
30 offensive language in disciplinary and
31 administrative meetings with IAFF Local 3217
32 members; and

33 WHEREAS, under Chief Denise Pouget's
34 leadership, discipline against IAFF Local 3217
35 members has increased when compared to past
36 practice; and

37 WHEREAS, Chief Denise Pouget and her
38 leadership team have failed to hold regular labor-
39 management meetings and changed the staffing
40 model without conducting Impact and
41 Implementation bargaining as required under the
42 CBA; and

43 WHEREAS, under the leadership of Chief
44 Denise Pouget, the level of service and standard
45 of care have been negatively impacted through
46 staffing reductions, because Aircraft Rescue Fire
47 Fighting (ARFF) units have been staffed
48 periodically with only a driver and EMS units
49 have been downgraded from Advanced Life
50 Support (ALS) to Basic Life Support (BLS);
51 additionally, critical equipment, such as the fire
52 suppression apparatus have been routinely placed
53 out of service; understaffing has resulted in vital
54 staff positions, such as Safety Officers and
55 Command Officers, being filled by members
56 performing other duties and the position of EMS
57 Supervisor has been eliminated; and

58 WHEREAS, the FRD under Chief Denise
59 Pouget's leadership has obtained federal funding

60 through a Staffing for Adequate Fire and
61 Emergency Response (SAFER) Grant to ensure
62 adequate staffing, safety of members, and
63 compliance with NFPA 1710, yet the positions
64 instituted by the SAFER Grant have been vacated
65 and remain unfilled and the new preferred
66 staffing levels do not reflect compliance with
67 NFPA 1710; and

68 WHEREAS, Chief Denise Pouget has
69 impacted public safety by failing to uphold the
70 NFPA 1710 staffing standards as required by the
71 SAFER Grant; and

72 WHEREAS, said activities by Bryan
73 Norwood, Fire Chief Denise Pouget, Assistant
74 Chief Daniel Redman and Assistant Chief Steven
75 Gervis have been to the detriment of the
76 operation of the Fire & Rescue Department and
77 the professional fire fighters represented by IAFF
78 Local 3217; and

79 WHEREAS, in April 2021, the members of
80 IAFF Local 3217 passed a resolution declaring
81 that they have NO CONFIDENCE in the
82 leadership of MWAA Vice President Bryan
83 Norwood, Fire Chief Denise Pouget, Assistant
84 Chief Daniel Redman and Assistant Chief Steven
85 Gervis; and

86 WHEREAS, the IAFF was founded to,
87 among other things, foster a higher degree of skill
88 and efficiency, improve members' health and
89 welfare, establish safety standards and improve
90 the social and economic conditions of its
91 members; therefore be it

92 RESOLVED, That the IAFF formally

93 censure MWAA Vice President of Public Safety
94 Bryan Norwood, Fire Chief Denise Pouget,
95 Assistant Chief Daniel Redman, and Assistant
96 Chief Steven Gervis; and be it further

97 RESOLVED, That the International
98 Association of Fire Fighters notify the following
99 individuals and entities of the censure: MWAA
100 Vice President Bryan Norwood, Fire Chief
101 Denise Pouget, Assistant Chief Daniel Redman,
102 Assistant Chief Steven Gervis, all affiliates of the
103 International Association of Fire Fighters, the
104 MWAA Board of Directors, MWAA President
105 and CEO John E. Potter and the appointers of the
106 MWAA Board of Directors – President Joseph
107 R. Biden, Maryland Governor Larry Hogan,
108 Virginia Governor Glenn Youngkin and Mayor
109 of the District of Columbia Muriel Bowser; and
110 be it further

111 RESOLVED, That the International
112 Association of Fire Fighters also notify the
113 following individuals and entities of the censure:
114 the Mayor of Alexandria City, the Chairman of
115 the Board for Arlington, Fairfax and Loudoun
116 Counties, The Board of Supervisors for
117 Arlington, Fairfax and Loudoun Counties and the
118 City Council of Alexandria; and be it further

119 RESOLVED, That notice of this censure be
120 disseminated to the AFL-CIO Executive
121 Committee, all IAFF affiliates, and the
122 International Association of Fire Chiefs (IAFC).

Submitted by: IAFF Local 3217, Metropolitan Washington
 Airports Authority Professional Firefighters

Cost Estimate: None

Annual or Perpetual Designation: Not Applicable

COMMITTEE RECOMMENDATION: Adopt as Revised

CONVENTION ACTION: Adopted as Revised

Unanimously

EXHIBIT B



DIANE A. SELTZER
ADMITTED IN MD AND DC

August 31, 2022

BY ELECTRONIC MAIL UNLESS OTHERWISE NOTED

IAFF President Edward Kelly Ekelly@iaff.org

4th District IAFF Vice President Andrew K. Pantelise AKPantelise@IAFF.org

IAFF Local 3217 General Counsel Reid Coploff trc@wmlaborlaw.com

President IAFF Local 3217 President Shawn Lynch in his official and individual capacity President@IAFFlocal3217.org

IAD Vice President of IAFF Local 3217 Laureano Avila-Mora in his official and individual capacity VicePresident.IAD@IAFFlocal3217.org

DCA Vice President of IAFF Local 3217 Hahn Deniston in her official and individual capacity VicePresident.DCA@IAFF3217.org

Executive Board Member Joseph Scarpone of IAFF Local 3217 in his official and individual capacities (by first class mail)

Executive Board Member Matthew Weschler of IAFF Local 3217 in his official and individual capacities (by first class mail)

Executive Board Member Andrew Brown of IAFF Local 3217 in his official and individual capacities (by first class mail)

Executive Board Member Kendra Howey of IAFF Local 3217 in her official and individual capacities kendranhowey@gmail.com

Executive Board Member Jeffrey Ferfolia of IAFF Local 3217
in his official and individual capacities (by first class mail)

Executive Board Member David Wieglosz of IAFF Local 3217
in his official and individual capacities (by first class mail)

Re: Fire Chief Denise Pouget,
Assistant Fire Chief Steven Gervis, and
Assistant Fire Chief Daniel Redman
IAFF Censure – Resolution 36

Dear Parties:

The Seltzer Law Firm represents Denise Pouget, Steven Gervis and Daniel Redman in connection with their claims of defamation and related torts against the IAFF, IAFF Local 3217, 4th District IAFF Office, and each of you in your individual and official capacities (the “IAFF Entities”). Please provide this correspondence to your legal counsel and have all future communications directed to my attention.

As you are aware, at the 56th IAFF Convention in Ottawa, Ontario, held from August 8-12, 2022, the IAFF unanimously adopted as revised Resolution No. 36, submitted by IAFF Local 3217, to censure Fire Chief Denise Pouget, Assistant Fire Chief Steven Gervis, and Assistant Fire Chief Daniel Redman (the “Censure”). As part of the Resolution, the IAFF notified MWAA Vice President Bryan Norwood, Fire Chief Denise Pouget, Assistant Chief Daniel Redman, Assistant Chief Steven Gervis, all affiliates of the International Association of Fire Fighters, the MWAA Board of Directors, MWAA President and CEO John E. Potter and the appointers of the MWAA Board of Directors – President Joseph R. Biden, Maryland Governor Larry Hogan, Virginia Governor Glenn Youngkin and Mayor of the District of Columbia Muriel Bowser, The Mayor of Alexandria City, the Chairman of the Board for Arlington, Fairfax and Loudoun Counties, the Board of Supervisors for Arlington, Fairfax and Loudoun Counties and the City Council of Alexandria, the AFL-CIO Executive Committee, all IAFF affiliates, and the International Association of Fire Chiefs (IAFC) of the Censure.

The Censure is replete with demonstrably false statements about my clients that have damaged their professional reputation before third parties. **We demand that you immediately formally retract the Censure, remove the Censure wherever it has been published (online, electronically or otherwise), and publish a formal apology and notice of retraction online, electronically, and in writing and distribute that apology and notice of retraction to all of the above entities who were notified of the Censure.**

Had you made any effort whatsoever to verify the factual allegations in the Censure, you would have easily learned the following:

- A. Lines 12- 19 of the Censure: WHEREAS, MWAA Vice President for Public Safety Bryan Norwood, Chief Denise Pouget, Assistant Chief Daniel Redman and Assistant Chief Steven Gervis have failed to communicate with IAFF Local 3217 leadership, failed to respond to requests, and failed to respond to grievances presented and communicated on behalf of the professional fire fighters represented by IAFF Local 3217

The Censure fails to provide *a single example* of when my clients failed to communicate with IAFF Local 3217 leadership, failed to respond to requests, or failed to respond to grievances presented and communicated on behalf of the professional fire fighters represented by IAFF Local 3217. No examples were presented to the individuals who voted on whether to adopt the Resolution. My clients are not aware of any requests to which they have failed to respond other than the request of Local 3217 President Shawn Lynch and of Vice President Hahn Deniston that Fire Chief Pouget remove her command staff and promising that “there will continue to be problems” if she fails to do so. My clients are aware of a single instance where a grievance deadline was accidentally missed, and when this was explained, the union simply proceeded to the next step in the process, i.e., presenting by former President Christopher Wanka. Of course, the Censure ignores the fact that the Union has missed deadlines, as well.

- B. Lines 22- 32 of the Censure: WHEREAS, Bryan Norwood and Chief Denise Pouget have engaged in excessive discipline of IAFF Local 3217’s members – such as demoting a member for failing to clean a helmet and suspending a member against the recommendation of the Vehicle Accident Review Board – all of which the Union has grieved and had reversed, and Bryan Norwood and Chief Denise Pouget have used profanity and other offensive language in disciplinary and administrative meetings with IAFF Local 3217 members

With respect to the allegation regarding excessive discipline, Fire Chief Pouget states that she is aware that MWAA Labor Relations requires management to issue discipline in a consistent manner and that prior discipline can impact the level of discipline imposed for subsequent infractions. All discipline she has proposed has been executed per policy and was verified and approved by MWAA Labor Relations before being proposed, as per MWAA Conduct and Discipline Directive HR 003 A.

With respect to the allegation that Chief Pouget disciplined a member for not cleaning a helmet, we remind you that all discipline is progressive in nature, and Chief Pouget is not at liberty to divulge prior infractions and prior discipline a member has received that warranted what the Censure has deemed “excessive” discipline for the infraction at hand. This proposed discipline was for failure to obey an order (insubordination). That being said, the issue went through the grievance and arbitration process, and the Local 3217 prevailed. All rights were restored to the member, and references to that action were removed from their records. There have been numerous instances where discipline Chief Pouget proposed was either not grieved or was grieved and was ultimately upheld. That the Censure references this single incident out of 37 instances of discipline over 48 months that she has served as Fire Chief

demonstrates that in the vast majority of cases, her disciplinary actions are in line with the infraction to which they relate. Considering how many times her actions have either not been challenged or have been upheld, it is clear that the IAFF entities have defamed her in the Censure.

With respect to suspending a member against the recommendation of the MWAA Vehicle Accident Review Board, Chief Pouget states that each department within MWAA is responsible for issuing its own discipline. As IAFF should know, the Vehicle Accident Review Board does not issue discipline; it determines only whether an accident was preventable or not preventable, may remove and reinstate driving status, and may suggest remediation. The corrective actions the MWAA Vehicle Accident Review Board can impose are minimal, and it does not preclude a department from issuing discipline. Again, considering that the Censure references exactly one suspension that was overturned shows that in the vast majority of cases, her disciplinary actions are in line with the infraction to which they relate.

The Censure fails to provide *a single example* of when Fire Chief Pouget has used profanity or other offensive language in disciplinary and administrative meetings with IAFF Local 3217 members. No examples were presented to the individuals who voted on whether to adopt the Resolution. This is another fabrication by the IAFF Entities.

Considering how many times her actions have either not been challenged or have been upheld, it is clear that the IAFF Entities have no basis for making these allegations and that in doing so in the Censure, they have defamed her.

- C. Lines 33- 36 of the Censure: WHEREAS, under Chief Denise Pouget's leadership, discipline against IAFF Local 3217 members has increased when compared to past practice

With respect to the allegation regarding increased discipline, Fire Chief Pouget states that she is not aware of the specific numbers of members disciplined prior to her employment with MWAA. MWAA hired her to, in part, evaluate overtime utilization, create efficiencies, explore alternate work schedules, and hold members accountable for their conduct. Indeed, in December 2019, she received the President's Award for upholding the core values of the Authority. The only thing that changed from the first two years of her leadership, when the IAFF Entities did not take issue with her job performance, and the time subsequent to that, was the installation of the new President of Local 3217, Christopher Wanka, on September 29, 2020, and the related change in its Executive Board, leadership, and philosophy.

- D. Lines 37- 42 of the Censure: WHEREAS, Chief Denise Pouget and her leadership team have failed to hold regular labor-management meetings and changed the staffing model without conducting Impact and Implementation bargaining as required under the CBA

This is yet another defamatory statement. As the IAFF Entities know or should know, Chief Pouget and former Union President Ronald Dowdy had conversations almost daily, and

they both agreed when they actually needed to meet. It was not until Mr. Wanka became President that the level of communication changed, and that was a direct result of the change in Union leadership – not because Chief Pouget and her leadership team failed to hold regular labor-management meetings. Shortly after President Wanka took office, he tweeted on Twitter that management was being unsafe because it had changed the staffing model. This tweet led to MWAA's Labor Relations advising Chief Pouget's command staff to not meet with union leadership until they had a Memorandum of Understanding ("MOU") in place between Labor and Management. In addition, any meeting would have to have the Labor Relations Specialist present. Eventually, the parties agreed to meet without a signed MOU, as long as the document was being worked on. There still is no MOU in place. Even a cursory amount of investigation would have revealed that this allegation is false, and we will hold the IAFF Entities accountable for the defamation that has resulted.

With respect to the defamatory allegation that my clients have changed the staffing model without conducting impact and implementation bargaining, we suggest that you read the CBA and the attached email from President Lynch regarding what must be negotiated. The Union applies the CBA's requirement of holding impact and implementation meetings only to Standard Operating Procedures that it does not want leadership to change, however, under the current CBA, right of assignment is a management right. As you well know, President Lynch sent Assistant Chief Redman an email stating that only policies marked with an "N" must be negotiated. The 2011 CBA states that management has to negotiate only those policies with an "N". Under Article 5, management has the right to determine the mission, number of employees, assignment of work, and the like. The Union's discontent that staffing has changed and that overtime has been reduced does not mean it has license to claim that management is not in compliance with the applicable CBA.

- E. Lines 43- 57 of the Censure: WHEREAS, under the leadership of Chief Denise Pouget, the level of service and standard of care have been negatively impacted through staffing reductions, because Aircraft Rescue Fire Fighting (ARFF) units have been staffed periodically with only a driver and EMS units have been downgraded from Advanced Life Support (ALS) to Basic Life Support (BLS); additionally, critical equipment, such as the fire suppression apparatus have been routinely placed out of service; understaffing has resulted in vital staff positions, such as Safety Officers and Command Officers, being filled by members performing other duties and the position of EMS Supervisor has been eliminated

Because the IAFF Entities cannot do so, their Censure fails to present a single specific instance where the level of service and the standard of care have been negatively impacted through staffing reductions or that there has been understaffing – much less “understaffing” that has resulted in the outcomes claimed by the Censure.

Airports are only required to staff the Fire Department according to FAA minimum standards. Per the Airport Certification Manual between MWAA and the airports, MWAA is required to staff the airports with a total of eight (8) people per day. Those standards are:

- a. 1 on each crash truck, to equal a total of 2 staffing 2 crash trucks at Reagan;
- b. 1 on each crash truck, to equal a total of 4 staffing 4 crash trucks at Dulles;
- c. 1 Command Officer at each airport, to equal 2 staffing between Reagan and Dulles;
- d. At each airport, 1 of the staffers must be first aid qualified.

Despite these Federally mandated minimum staffing requirements, MWAA currently is staffing the airports with 44 positions per shift. Its preferred staffing model dictates that it may drop to a level of 33 staffers total for both airports. When staffing drops below 33 staffers, MWAA hires back personnel on overtime to meet its preferred staffing model. Currently, MWAA is intentionally overstaffed so as to allow FRD Command Staff to present a new shift model to Corporate Headquarters. Under the current staffing model, MWAA rarely has mandatory holdovers – which is quite different from many fire departments in the region. When Chief Pouget was hired in 2018, the Fire Department had 153 positions. Since then, it has increased its operational staffing by 10, for a current total of 163 positions.

In changing its model, the leadership team studied airports around the country and confirmed that Index C airports, such as Reagan, typically have 1 person on crash trucks. Nevertheless, leadership decided at Reagan Airport to place 2 people on crash trucks because of its special services. Sometimes, it needs to cross staff for its boat program. With respect to Index E airports, such as Dulles, they learned that most Index E airports staff with 2 or more people on each crash truck; however, when the airport has a strong structural Firefighting complement, as there is at Dulles Airport, the crash truck staffing is sometimes reduced. This information led leadership to unanimously agree to reduce the preferred (or minimum staffing) model at Dulles Airport by dropping the second crash trucks to 1 person staffing and ensuring the 2 first-line crash trucks are staffed with 2 staffers.

It is important to remember many of the departments around the region have 3 staffers on trucks and engines, and under Chief Pouget, there are routinely 4 staffers on trucks and engines. That is an NFPA recommendation but is not a requirement unless the department has adopted NFPA 1710 into its policy. Most departments do not do so, for various reasons.

Another false assertion is that my clients eliminated the position of EMS Supervisor. In reality, the position was not eliminated; rather, one EMS officer was assigned to day work and the two other EMS officers were placed in Fire Captain roles *with the Local 3217's knowledge*. Two years ago, leadership negotiated a career ladder with the Union which ultimately aligned the supervisor to subordinate ratio more appropriately. In the process, nine (9) Captain positions were eliminated through attrition, but there was no reduction in total staffing numbers. Part of that process was to re-evaluate Command Support / Administrative Captain shift work positions. Typically, EMS Officers and Safety Officers at other Airports are staffed with day work positions, and the practice at MWAA is consistent with the practice of other Airports.

Also demonstrably false is the Censure's claim that leadership has not followed Advanced Life Support ("ALS") protocols for NFPA and does not have 2 ALS providers on every call that it is required to have 2 such providers. Under my clients' leadership, MWAA has successfully executed a robust extended practice program by providing a \$2,600.00 specialty pay incentive, thereby significantly increasing the participation of extended practice Paramedics. This incentive has allowed the department to utilize more Paramedics and to place them on fire apparatus. These Paramedics routinely act as the second Paramedic assisting Medic Units, and they respond on fire apparatus to treat patients when transport units are scarce (such as during heavy call volume times) and to assist on high acuity calls. Generally, transport units are scarce within the northern Virginia region during the hours of 9:00 a.m. to 9:00 p.m. Paramedics riding fire apparatus is a best practice in the region and in many areas of the country, despite the fact that the Local 3217 is not aware of that fact or that this practice is different from what it previously was. This model allows for more ALS availability for the traveling public. On the outside chance that MWAA does not have two (2) Paramedics readily available on any of its apparatus, per the Mutual Aid Agreement, a mutual medic unit would be dispatched from Loudon County, Fairfax County, Alexandria or Arlington, depending on the location of the call. This is a cost-effective solution that ensures that the public's ALS need are properly served. Along with adding extended practice pay, Chief Pouget increased Paramedic incentive pay from \$2600.00 to \$10,000.00 per year.

The Censure ignores the fact that MWAA relies upon other fire departments to fill building fire alarms, Aircraft Alerts and major automobile accidents. MWAA's small fire department cannot manage everything by itself, and it was not designed to operate in a vacuum without mutual aid. Just like each fire department in the region does, MWAA's fire department depends on mutual aid every day.

Despite all of this, we remind the IAFF Entities that MWAA has not adopted the NFPA in its policies and therefore is not required to staff apparatus per the NFPA recommendations. And between having ALS providers ride on suppression apparatus and the availability of mutual aid, MWAA generally exceeds the NFPA's requirements in any event.

Finally, a thorough search of the databases reveals no data whatsoever to support the Censure's defamatory claim that leadership routinely places fire apparatus out of service. Had Local 3217 been able to provide a single fact showing such "routine" activity, it would have done so. No such examples exist.

- F. Lines 58-67 of the Censure: WHEREAS, the FRD under Chief Denise Pouget's leadership has obtained federal funding through a Staffing for Adequate Fire and Emergency Response (SAFER) Grant to ensure adequate staffing, safety of members, and compliance with NFPA 1710, yet the positions instituted by the SAFER Grant have been vacated and remain unfilled and the new preferred staffing levels do not reflect compliance with NFPA 1710

As the IAFF Entities are well aware (since their members are in the positions actually funded through the SAFER Grant), the SAFER Grant positions remain filled. Hiring for non-SAFER Grant positions is ongoing. We have a log of employees who my clients have hired since 2019, and it is extensive and ongoing.

- G. Lines 68-71 of the Censure: WHEREAS, Chief Denise Pouget has impacted public safety by failing to uphold the NFPA 1710 staffing standards as required by the SAFER Grant

Claiming that Chief Pouget has failed to uphold the NFPA 1710 staffing standards (and thus violated the SAFER Grant's terms) is yet another defamatory statement. NFPA requires departments to strive for 4 person staffing. However, the overall requirement is to strive for a benchmark in the 90th percentile, which leadership has consistently met with one exception that occurred during, and due to, a COVID-19 outbreak in 2020. Overall, leadership routinely staffs apparatus with 4 persons. Even during the height of the COVID-19 pandemic, when leadership had to adjust staffing for personnel safety, it had 4 person staffing 99.03% of the time.

When there was a COVID-19 outbreak at Station 302, my clients did everything they could to protect the safety of personnel. Cohorting was recommended by the Infectious Control Officer of the Arlington County Health Department and was implemented, thereby reducing the contact between firefighters and reducing the spread of the virus.

- H. Lines 72-78 of the Censure: WHEREAS, said activities by Bryan Norwood, Fire Chief Denise Pouget, Assistant Chief Daniel Redman and Assistant Chief Steven Gervis have been to the detriment of the operation of the Fire & Rescue Department and the professional fire fighters represented by IAFF Local 3217

Once again, the Censure makes defamatory statements without any record evidence to support the allegations presented as facts. There is not one fact that supports the blanket allegation that my clients' conduct has "been to the detriment of the operation of the Fire & Rescue Department and the professional fire fighters represented by IAFF Local 3217." The changes leadership made were done at the request of the Metropolitan Washington Airports Authority for whom they work. MWAA presented my clients with a mission, with which they completely agree, to create efficiencies while keeping personnel safety in the forefront. MWAA tasked them with presenting a staffing model that would reduce annual work hours and give the employees a better work life balance. My clients executed that mission by conducting a staffing study and evaluating comparables. In addition, they obtained a SAFER Grant and changed the staffing model.

In comparison to regional fire departments, MWAA has a robust staffing model that has dramatically reduced overtime costs, and the Local 3217 is displeased, to say the least, with the reduction in the amount of overtime available to its members. When Chief Pouget took office, she learned that employees were preoccupied with working overtime. Many worked

72 and 96 hours straight. She and her staff found this to be a huge liability for the Authority. The discontent began as soon as my clients started to change the staffing model by lawfully and ethically executing their management rights and responsibilities and thereby maintaining control of overtime. Indeed, the total amount of overtime costs in 2019 (not including FLSA/inherent, built-in overtime due to the schedule) was \$1,346,699.70. In 2020, it was \$438,054.11, which was a 67.42% reduction from 2019. In 2021, it was \$124,223.00, which was an almost a 91% reduction from 2019.

The process by which the Censure was adopted was as negligent and as flawed as was the IAFF Entities' "efforts" to verify its content.

First and foremost, the IAFF Entities never asked my clients for any information regarding the allegations contained in the Censure. The IAFF Entities had no interest whatsoever in presenting the truth, presenting the facts, or even of presenting leadership's perspective regarding what has transpired.

Second, the IAFF Entities did no fact-checking whatsoever before adopting and publishing the defamatory Censure.

Third, the "process" through which the Resolution went before becoming a Censure is horrendously flawed and reckless. Local 3217 sent its Vote of No Confidence to its District Office, which is District 4 that includes Virginia. Then, without any further review, the District Office receives and approves the Local's information to **then** be voted on at a District Level Convention. Like with a grand jury, the information provided is one sided. Of course, a grand jury decides only if there is enough to permit the prosecution to take action; it is not the judge and jury for the matter.

Once the matter passes at the District Level, the District Office submits a "Resolution" to be read and voted upon at the National Convention. Once the Resolution is at the National Convention, it is read on the convention floor and is voted upon by members with little to no information other than what is contained in the Resolution and what, if any, information, the Local's official adds when it is read. As a result, a Resolution is typically approved based on the IAFF Entities' intentional and reckless decision not to present all relevant facts. This situation was particularly egregious and willful in that Chief Pouget made efforts to communicate with the District 4 Representative Andrew Pantelis to inform him that the allegations were false, but he would not meet with her unless Local 3217 President Lynch approved of it.

Under the direct leadership of Chief Pouget, Assistant Fire Chief Gervis and Assistant Fire Chief Redman; the MWAA Fire and Rescue Department was recognized by the ARFF Working group for their "...outstanding act of public service which displayed superior intelligence and/or effort in an unusual circumstance of stress and/or danger by an individual or group at an emergency on an airport or at an aircraft emergency." This award by the ARFF world leaders is

but one example that disproves any claims that my clients are anything other than a strong asset to the operations of the Fire and Rescue Department.

The IAFF Entities made a very poor decision to defame my clients and now must remedy the situation they created. It is our sincere hope that the IAFF Entities will immediately take the actions demanded in this correspondence. If they do not, and if we do not hear from you or your counsel by **September 8, 2022**, we will proceed with litigation. Thank you.

Sincerely,

Diane A. Seltzer

Diane A. Seltzer

cc: Fire Chief Denise Pouget
Assistant Fire Chief Steven Gervis
Assistant Fire Chief Daniel Redman

EXHIBIT C

FRIEDLANDER MISLER

Established 1964

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Morris Kletzkyn, Esq.
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September 2, 2022

Shawn.Lynch@mwaa.com

Shawn Lynch, Firefighter II/Paramedic
Metropolitan Washington Airports Authority
1 Aviation Circle, Fl. 7
Washington, District of Columbia, 20001

Re: Investigation of IAFF Complaints

Dear Mr. Lynch:

The undersigned has been retained by the Metropolitan Washington Airports Authority to conduct an administrative investigation as set forth in the Conduct and Discipline Directive into an anonymous complaint that was received by the Integrity Counts Hotline. The complaint alleges that you have bullied and harassed co-workers and that your actions have created a hostile work environment at the Fire Department.

I have attached hereto an Administrative Investigation Notice, which I will ask you to sign prior to the time we commence our interview.

I have also taken the liberty of sending a copy of this correspondence to your Union representative.

I will contact you shortly to schedule a convenient time for your interview. I ask that you not discuss this investigation with anyone other than your representative.

If you have any preliminary questions, you or your representative should feel free to contact me.

Sincerely yours,

FRIEDLANDER MISLER, PLLC

/s/ Morris Kletzkyn

By:

Morris Kletzkyn

Attachment

cc: Reid Coploff, Esq. (TRC@mselaborlaw.com)

EXHIBIT D

MOONEY, GREEN, SAINDON, MURPHY & WELCH, P.C.

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September 8, 2022

Diane A. Seltzer
4800 Hampden Lane, Suite 700
Bethesda, MD 20814

Via electronic mail: dseltzer@seltzerlawfirm.com

Re: Defamation Lawsuit Threat Against IAFF and Local 3217 Officers

Dear Ms. Seltzer,

Please be advised that the International Association of Fire Fighters (IAFF) and Local 3217 MWAA Professional Firefighters (Local 3217) Officers are in receipt of your August 31, 2022 demand letter and are being represented by the undersigned counsel in this matter. Kindly direct all future communications regarding this matter to our attention.

You have threatened our clients with a defamation and unidentified “related torts” lawsuit over the introduction and adoption of a censure resolution during the 56th annual IAFF Convention involving Metropolitan Washington Airports Authority (“MWAA”) Fire & Rescue Department (“FRD”) Fire Chief Denise Pouget, Assistant Fire Chief Steven Gervis, and Assistant Fire Chief Daniel Redman. The censure resolution highlighted actions and decisions by Fire Chief Pouget, Assistant Fire Chief Gervis, and Assistant Fire Chief Redman that have led to a deterioration of labor relations, an increase to the amount of discipline issued and concerns about the ability of the FRD to adequately ensure public safety. Fire Chief Pouget’s, Assistant Fire Chief Gervis’, and Assistant Fire Chief Redman’s threat to bring a defamation and unidentified “related torts” lawsuit against IAFF and Local 3217 Officers, and their subsequent anonymous complaints to MWAA against Local 3217 President Lynch and Local 3217 Vice President Deniston for workplace harassment and a hostile workplace because of “IAFF Complaints,” is nothing more than a blatant attempt on their part to retaliate against and silence these Officers for exercising their First Amendment rights.

Initially, it must be stated that your clients are very well aware that every statement made in the censure resolution is verifiably truthful. You even admit throughout your threat letter that the statements contained in the censure resolution are true: “My clients are aware of a single

Diane A. Seltzer
 September 8, 2022
 Page 2

instance where a grievance deadline was accidentally missed,” “37 instances of discipline over 48 months that she has served as Fire Chief,” “the Censure references exactly one suspension that was overturned,” “This tweet led to MWAA’s Labor Relations advising Chief Pouget’s command staff to not meet with union leadership,” “This information led leadership to unanimously agree to reduce the preferred (or minimum staffing) model at Dulles Airport,” “nine (9) Captain positions were eliminated through attrition,” “EMS Officers and Safety Officers at other Airports are staffed with day work positions, and the practice at MWAA is consistent with the practice of other Airports,” “MWAA’s small fire department cannot manage everything by itself, and it was not designed to operate in a vacuum without mutual aid,” “MWAA has not adopted the NFPA in its policies and therefore is not required to staff apparatus per the NFPA recommendations,” “The changes leadership made were done at the request of the Metropolitan Washington Airports Authority for whom they work. MWAA presented my clients with a mission, with which they completely agree, to create efficiencies....MWAA tasked them with presenting a staffing model that would reduce annual work hours.... My clients executed that mission,” and “The discontent began as soon as my clients started to change the staffing model.” Thus, your threat letter, in and of itself, proves that every statement set forth in the censure resolution is true.

Moreover, in addition to being verifiably true, none of the statements in the censure resolution are defamatory. None call into question your clients’ morality or professional competence. They simply state actions taken or decisions made by your clients. Nothing therein would tend to harm the reputation of them as to lower them in the estimation of their community or hold them up to scorn, ridicule, or contempt, or are calculated to render them infamous, odious, or ridiculous.

Furthermore, even if you could somehow prove that the statements contained in the censure resolution were actually false and defamatory, you will never be able to satisfy the actual malice standard that would be necessary to prevail in a defamation action against IAFF and Local 3217 Officers.

The MWAA is a public body created and given authority by legislative action of the Commonwealth of Virginia, the District of Columbia, and the United States Congress. *See* D.C. Code §§ 9-901 *et seq.*; Va. Code §§ 5.1-152 *et seq.*; 49 U.S.C. § 49104 *et seq.* The MWAA’s Board of Directors are appointed by the Governors of Virginia and Maryland, the Mayor of Washington, D.C., and the President of the United States. Additionally, courts have concluded that the MWAA is a “public body which may lawfully exercise governmental power.” *Kerpen v. Metro. Wash. Airports Auth.*, 907 F.3d 152, 162 (4th Cir. 2018). *See also Hudson v. Am. Fed’n of Gov’t Emps.*, No. 19-2738 (JEB), 2019 BL 467359, at *3 (D.D.C. Dec. 6, 2019) (finding that it is “clear that the MWAA is a governmental authority rather than a private one”).

As Fire Chief and Assistant Fire Chief of a governmental authority, your clients are public officials. Courts have routinely characterized public safety officers (including even rank-and-file police officers) as public officials for purposes of examining defamation claims. *See, e.g., Dean v. Town of Elkton*, 54 Va. Cir. 518, 523-24 (2001) (noting that “it has long been held in numerous other jurisdictions that police officers are considered a ‘public official’” and concluding that

Diane A. Seltzer
 September 8, 2022
 Page 3

plaintiff police officers were public officials for purposes of defamation claim); *Miller v. Minority Brotherhood of Fire Protection*, 463 N.W.2d 690, 695 (Wis. Ct. App. 1990) (defamation plaintiff, who was one of 45 to 50 captains for city fire department and was responsible for general supervision of personnel, was a public official); *Papa v. Schroeder*, No. CV146052720S, 2016 BL 103625, at *4 (Conn. Super. Ct. Mar. 1, 2016) (former deputy chief of city fire department was public official for defamation purposes); *O'Donnell v. City of Buffalo*, Nos. A07-203, A07-606., 2008 BL 22748, at *4 (Minn. Ct. App. Feb. 5, 2008) (fire captain, whose duties included “taking command and control over firefighters and directing their efforts in emergency situations,” was a public official); *Moseley v. The Birmingham News Co.*, No. CV 90-746L, 1990 BL 238, at *2 (Ala. Cir. Ct. Oct. 5, 1990) (“The Huntsville Fire Chief was a public official, [thus] the protections of the First Amendment are implicated.”); *Teodecki v. Litchfield Twp.*, 2015-Ohio-2309, 38 N.E.3d 355, 365 (Ct. App. 9th Dist.) (“As the former fire chief of Litchfield Township, Mrs. Teodecki is a public official. Therefore, in regard to the fault element, Mrs. Teodecki must demonstrate that the offending statement was made with actual malice.”). Accordingly, the Fire Chief and Assistant Fire Chiefs of the MWAA will be deemed public officials. When the plaintiff alleging defamation is a public official, the plaintiff has the burden of proving, by clear and convincing evidence, that the challenged statement was made with “actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *Carr v. Forbes, Inc.*, 259 F.3d 273, 282 (4th Cir. 2001). Even if every assertion in your threat letter were true, which they are not, you would not be able to satisfy the actual malice standard.

At multiple points throughout your letter, you emphasize that the Union failed to make efforts to confirm the veracity of the statements made in the censure resolution or failed to provide examples to support certain statements set forth therein. The Supreme Court, however, has made clear that reckless conduct for purposes of a defamation claim is “not measured by whether a reasonably prudent man would have published, or would have investigated before publishing” the allegedly defamatory statement; rather, there must be “sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Not only did the IAFF and Local 3217 Officers not entertain “serious doubts” about the veracity of the statements made in the censure resolution before publishing it, but the statements were made with advice of counsel and with factual evidence in support thereof.

Additionally, even if your clients were somehow deemed not to be public officials, because the censure resolution was published in the context of a labor dispute between MWAA management and union officials, the heightened actual malice standard would still apply to the alleged defamatory statements. “There can be no recovery for defamation uttered or published in the setting of a labor dispute in the absence of malice.” *Davis Co. v. United Furniture Workers*, 674 F.2d 557, 562 (6th Cir.), *cert. denied*, 459 U.S. 968 (1982). “We therefore hold that the ‘actual malice’ standard of *New York Times v. Sullivan* applies to defamation claims founded upon statements made by and about participants in a public-sector labor dispute.” *Dale v. Ohio Civil Service Employees*, 57 Ohio St. 3d 112, 136 LRRM 2898 (1991); *Steam Press Holdings v. Hawaii*

Diane A. Seltzer
 September 8, 2022
 Page 4

Teamsters, Local 996, 302 F.3d 998, 1004 (9th Cir. 2002) (requiring actual malice to be established in a state-law defamation action predicated on statements made during the course of a labor dispute). The National Labor Relations Act broadly defines a “labor dispute” to include “any controversy concerning terms, tenure or conditions of employment.” 29 U.S.C. § 152(9) (emphasis supplied).

Your clients’ allegations of defamation are clearly and undeniably frivolous and without merit. Should your clients take the extraordinary step of pursuing baseless litigation against any IAFF or Local 3217 Officials, we will seek on their behalf, all applicable anti-SLAPP protections and remedies, including seeking full reimbursement of each of our clients’ attorneys’ fees and costs from your clients.

What is clear is that your clients do not like their actions or decisions to be questioned, and they are using threats to try to silence fire fighters from exercising their First Amendment right to address matters of safety concerns with their members and the public. In addition to threatening an unfounded defamation lawsuit, your clients filed an anonymous, baseless workplace harassment and hostile work environment complaint against Local 3217 President Shawn Lynch and Vice President Hanh Deniston over “IAFF Complaints” that had nothing to do with their conduct in the workplace and that has resulted in an unwarranted investigation in a further effort to silence them into complicity.

“The First Amendment guarantees an individual the right to speak freely, including the right to criticize the government and government officials,” and “[f]ear of retaliation may chill an individual’s speech, and, therefore, permit the government to produce a result which [it] could not command directly.” *Trulock v. Freeh*, 275 F.3d 391, 404 (4th Cir. 2001) (internal citations omitted). “To establish a First Amendment retaliation claim, a plaintiff must prove three elements: (i) that [her] speech was protected; (ii) that the defendant’s allegedly retaliatory action adversely affected [her] constitutionally protected speech; and (iii) that a causal relationship existed between [her] speech and the defendant’s retaliatory action.” *Id.* “The First Amendment right to free speech includes not only the affirmative right to speak, but also the right to be free from retaliation by a public official for the exercise of that right.” *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685 (4th Cir. 2000). “[A] public official may not misuse his [or her] power to retaliate against an individual for the exercise of a valid constitutional right,” *Trulock*, 275 F.3d at 405.

Section 1983 creates a civil cause of action against a state actor for the “deprivation of any rights, privileges, or immunities secured by” the federal Constitution. 42 U.S.C. § 1983; *see also Albright v. Oliver*, 510 U.S. 266, 271 (1994). “[F]or purposes of a First Amendment retaliation claim under § 1983, a plaintiff suffers adverse action if the defendant’s allegedly retaliatory conduct would likely deter ‘a person of ordinary firmness’ from the exercise of First Amendment rights.” *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005) (quoting *Washington v. County of Rockland*, 373 F.3d 310, 320 (2d Cir. 2004)). In evaluating whether the government action “chill[s] or adversely affect[s]” protected activity, the Court makes an objective determination whether “a similarly situated person of ‘ordinary firmness’ reasonably would be chilled by the government conduct in light of the

Diane A. Seltzer
 September 8, 2022
 Page 5

circumstances presented in the particular case." *Balt. Sun Co. v. Ehrlich*, 437 F.3d 410, 416 (4th Cir. 2006).

Several courts have ruled that a threat of a defamation lawsuit chills and deters the exercise of First Amendment speech. As the Court in *Wash. Post Co. v. Keogh*, 365 F.2d 965, 968 (D.C. Cir. 1966) held,

[o]ne of the purposes of the *Times* principle, in addition to protecting persons from being cast in damages in libel suits filed by public officials, is to prevent persons from being discouraged in the full and free exercise of their First Amendment rights with respect to the conduct of their government. The threat of being put to the defense of a lawsuit brought by a popular public official may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself, especially to advocates of unpopular causes. All persons who desire to exercise their right to criticize public officials are not as well equipped financially as the Post to defend against a trial on the merits. Unless persons, including newspapers, desiring to exercise their First Amendment rights are assured freedom from the harassment of lawsuits, they will tend to become self-censors. And to this extent debate on public issues and the conduct of public officials will become less uninhibited, less robust, and less wide-open, for self-censorship affecting the whole public is "hardly less virulent for being privately administered." *Smith v. People of State of California*, 361 U.S. 147, 154, 80 S.Ct. 215, 219, 4 L.Ed.2d 205 (1959).

Courts have held that the threat alone to retaliate is sufficient to support a First Amendment retaliation claim insofar as an official threat is sufficient to deter a person of ordinary firmness in the pursuit of his First Amendment rights. See *Brodheim v. Cry*, 584 F.3d 1262, 1270 (9th Cir. 2009) ("[T]he mere *threat* of harm can be an adverse action . . . because the threat itself can have a chilling effect."); *Burgess v. Moore*, 39 F.3d 216, 218 (8th Cir. 1994) (finding the threat to retaliate against a prisoner sufficient to establish a First Amendment violation). For a threat to be actionable on a Section 1983 retaliation claim, it would have to dissuade a plaintiff from engaging in protected action in the future. See *Virginia v. Hicks*, 539 U.S. 113, 119, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003) (expressing concern that the mere threat to enforce an overbroad law "may deter or 'chill' constitutionally protected speech").

In retaliation for engaging in their protected First Amendment speech right of raising public safety concerns about their actions and decisions, and in an effort to deter them from exercising their First Amendment rights in the future, Fire Chief Pouget, Assistant Fire Chief Gervis, and Assistant Fire Chief Redman have threatened a frivolous defamation lawsuit against Local 3217 Officers and filed a baseless workplace complaint against their President and Vice President, which has led to an investigation that could result in discipline or discharge. Such actions clearly violate the Local 3217 Officers' First Amendment rights and right to assist a labor organization freely and without fear of penalty or reprisal and without interference, restraint or coercion from MWAA management.

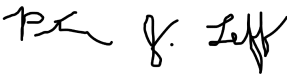
Diane A. Seltzer
September 8, 2022
Page 6

Accordingly, your clients have until **Monday, September 12, 2022**, to certify in writing that they will not take any legal action against any IAFF or Local 3217 Officer over the censure resolution and withdraw the complaint filed against President Lynch and Vice President Deniston. Failure to do so will result in the Local 3217 Officers filing a Section 1983 lawsuit against MWAA and each of your clients for unlawfully retaliating against them and seeking to chill their First Amendment rights because they engaged in protected First Amendment speech activities. Furthermore, Local 3217 will file unfair labor practice charges against MWAA and your clients for unlawfully interfering with, restraining, or coercing them in the exercise of their right to assist a labor organization freely and without fear of penalty or reprisal.

We look forward to your clients' decision to stop violating the constitutional rights of IAFF and Local 3217 Officers.

Very truly yours,

MOONEY, GREEN, SAINDON,
MURPHY & WELCH P.C.

By: 
Peter J. Leff

cc: Ed Kelly, IAFF General President
Andrew K. Pantelis, IAFF 4th District Vice President
Shawn Lynch, IAFF Local 3217 President
Laureano Avila-Mora, IAFF Local 3217 IAD Vice President
Hanh Deniston, IAFF Local 3217 DCA Vice President
Joe Scarpone, IAFF Local 3217 IAD Executive Board Member
Matthew Weschler, IAFF Local 3217 IAD Executive Board Member
Andy Brown, IAFF Local 3217 IAD Executive Board Member
Kendra Howey, IAFF Local 3217 DCA Executive Board Member
Jeffrey Ferfolia, IAFF Local 3217 DCA Executive Board Member
David Wielgosz, IAFF Local 3217 DCA Executive Board Member