

STATE OF MINNESOTA
COUNTY OF HENNEPINDISTRICT COURT
FOURTH JUDICIAL DISTRICT

Shea Chwialkowski,

Plaintiff,

vs.

City of Richfield,

Defendant.

Court File No. _____

Case Type: Employment

COMPLAINT
(Jury Trial Demanded)

Plaintiff Shea Chwialkowski ("Plaintiff"), by and through his attorney, Peters PLLC, brings this action for damages and other relief, stating the following as his claims against the City of Richfield ("Defendant" or "City"):

PARTIES

1. Plaintiff is an adult resident of Minnesota. Plaintiff began his employment as a Firefighter for the Richfield Fire Department ("RFD") on or around January 14, 2014.
2. Defendant is a Minnesota municipal corporation located in Hennepin County, Minnesota.
3. During all relevant times, Plaintiff was an "employee" of Defendant under Minn. Stat. § 181.931. Defendant was Plaintiff's "employer" within the meaning of Minn. Stat. § 181.931.

JURISDICTION AND VENUE

4. Plaintiff brings this action under the Minnesota Whistleblower Act, Minn. Stat. § 181.931, et seq., and the Court has subject matter jurisdiction to hear and adjudicate such claims.

5. This Court has personal jurisdiction over Defendant and venue is proper in Hennepin County because the unlawful practices described below occurred in this county.

FACTUAL ALLEGATIONS

6. The RFD is a division of the City's safety agency. It is responsible for providing fire, emergency, medical, and rescue services to the City's residents.

7. At all relevant times, Mike Dobesh served as the RFD's Fire Chief. As Fire Chief, Chief Dobesh reports to Defendant's City Manager, Katie Rodriguez.

8. In October 2013, Plaintiff applied for a firefighter position with the RFD. As part of its selection process, the City interviewed, tested, and ranked all the eligible candidates for the position. Because Plaintiff ranked first of all the candidates, the City offered him the job.

9. Plaintiff began working for the RFD as a firefighter on or around January 14, 2014.

10. Plaintiff performed exceptionally well as a firefighter. He consistently received "outstanding" or "above satisfactory" ratings on his annual reviews, and he was never disciplined or placed on any type of performance improvement plan prior to being terminated.

11. Based on Plaintiff's excellence as a firefighter, he has been invited multiple times to present at the prestigious national Fire Department Instructors Conference. Over 5000 firefighters apply to present at this conference each year, but only around 210 are selected. Plaintiff holds the distinction of being the only person to represent the RFD at the national Fire Department Instructors Conference, having done so five times.

12. Plaintiff has also contributed to several firefighting textbooks, including authoring sections of Jones & Bartlett's "Fire Instructor I" and "Fire Instructor: Principles and Practices."

13. Because of Plaintiff's exceptional job performance, in or around April 2021, Chief Dobesh promoted him two levels to the position of Assistant Chief, Training & Operations.

14. In accordance with Minnesota law, the City of Richfield requires all firefighters to live within 10 minutes of the RFD (“Ten-Minute Residency Requirement”).

15. In September 2022, Plaintiff discovered that his colleague Joshua Nelson, an RFD firefighter, did not live within ten minutes of the RFD. As a result, Mr. Nelson was not complying with the Ten-Minute Residency Requirement.

16. Because of Plaintiff’s personal and professional relationship with Mr. Nelson, he was at first reluctant to report him for not complying with the Ten-Minute Residency Requirement. Even so, as an Assistant Chief, he knew he needed to inform Chief Dobesh about the situation.

17. In or around September 2022, Plaintiff notified Chief Dobesh that Mr. Nelson no longer resided within ten minutes of the RFD and thus was violating the Ten-Minute Residency Requirement (“Whistleblower Report”).

18. As part of his Whistleblower Report, Plaintiff provided Chief Dobesh with screenshots of property records showing that Mr. Nelson lived more than ten minutes away from the RFD.

19. Plaintiff asked Chief Dobesh not to identify him as a whistleblower with respect to Mr. Nelson’s residency because he feared retaliation from Mr. Nelson and other RFD firefighters.

20. It took about three weeks for the RFD to act in response to Plaintiff’s Whistleblower Report. And when the RFD finally did do something, it did not confront Mr. Nelson directly. Instead, it conducted a department-wide driver’s license audit to determine where all the firefighters lived. This audit unsurprisingly flagged Mr. Nelson’s home address because it was more than ten minutes away from the RFD.

21. Following the City's driver's license audit, Mr. Nelson admitted that he was not complying with the Ten-Minute Residency Requirement. The City then placed him on paid leave while it investigated further.

22. Plaintiff participated in the investigation into Mr. Nelson's residency. Along with providing the property record screenshots showing where Mr. Nelson lived, he also sat for several interviews with Chief Dobesh and HR Director Jamie Haefner (among others), and turned over multiple text messages between he and Mr. Nelson.

23. On December 15, 2022, the City terminated Mr. Nelson for not complying with the Ten-Minute Residency Requirement.

24. Following Mr. Nelson's termination, several members of the RFD, including Chief Dobesh, began treating Plaintiff differently than previously. Among other things, many of the firefighters stopped speaking to him and started giving him the cold shoulder. Similarly, Chief Dobesh began excluding him from high-level meetings and stopped copying him on important emails.

25. In January 2023, Chief Dobesh handed Plaintiff a document entitled "counseling memorandum," and instructed him to sign it.

26. Chief Dobesh did not explain what the memorandum was for, but just told Plaintiff that the City Attorney wanted him to sign it to appease Mr. Nelson and his lawyer, who by this time was challenging his own discharge. Chief Dobesh described the counseling memorandum as "completely meaningless" to the City. For that reason, Plaintiff signed it.

27. On information and belief, towards the end of January 2023, Mr. Nelson settled his legal claims against the City through mediation.

28. On February 6, 2023, Chief Dobesh met with several RFD firefighters to gather their input on his own performance, as well as Mr. Nelson's termination ("February 6 Meeting"). Though Plaintiff was initially slated to join this discussion, he was asked to leave shortly after the meeting began, because the other firefighters were angry about him making the Whistleblower Report.

29. On information and belief, during the February 6 Meeting, several RFD firefighters continued to express anger to Chief Dobesh about Plaintiff's role in Mr. Nelson's termination.

30. Chief Dobesh met with Plaintiff and Assistant Fire Chief Jenell Wood after the February 6 Meeting. Plaintiff commented that Chief Dobesh looked like he had gotten his "butt kicked" during the meeting. Chief Dobesh agreed that he had.

31. Two days later, on February 8, 2023, Chief Dobesh came to Plaintiff's office unannounced and asked him in a shaky voice to follow him to a meeting in the Executive Conference Room ("February 8 Meeting"). Though Plaintiff had no idea what the meeting was about, he did as he was instructed. When he arrived at the conference room, he found Jamie Haefner, the City's Human Resources Manager, waiting for him.

32. Chief Dobesh began the February 8 Meeting by claiming to have received a complaint about Plaintiff that was, according to him, so terrible that he wanted to fire him immediately. When Plaintiff asked about the nature of the complaint, both Chief Dobesh and Ms. Haefner refused to say.

33. When Plaintiff then noted the complaint's suspicious timing in relation to his Whistleblower Report, Chief Dobesh and Ms. Haefner again refused to provide additional information. Ms. Haefner instead slid a letter across the table notifying Plaintiff that he was

being placed on administrative leave pending an investigation. The letter conspicuously omitted the nature of the investigation or what Plaintiff was allegedly accused of.

34. Ms. Haefner then instructed Plaintiff to surrender all City-owned property in his possession and to leave other City property in his office. She also told Plaintiff to avoid non-public areas in the City.

35. Ms. Haefner then asked Plaintiff if he had any questions. When he said he had “about a million of them about the nature of the complaint,” Ms. Haefner refused to provide more information.

36. Word quickly got around the RFD that Defendant had placed Plaintiff on administrative leave. This led several of Plaintiff’s colleagues to reach out to him to offer support.

37. On February 27, 2023, Plaintiff met with Ms. Haefner and Assistant City Manager Sack Thongvahn to ostensibly discuss the City’s investigation into him (“February 27 Meeting”).

38. The February 27 Meeting lasted nearly three hours. Though Ms. Haefner had told Plaintiff the meeting’s purpose was to discuss the investigation, at no point did either she or Mr. Thongvahn articulate the allegations supposedly being investigated.

39. Rather than discuss the allegations against Plaintiff, Ms. Haefner and Mr. Thongvahn spent nearly all three hours of the February 27 Meeting asking Plaintiff about random interactions he had with other RFD personnel over the years. Because these questions had no obvious relationship to anything discussed at the previous meeting, it quickly became apparent to Plaintiff that Ms. Haefner and Mr. Thongvahn were asking questions to try to create a pretext to fire him.

40. About two weeks after the February 27 Meeting, Plaintiff attended another meeting with the City. This meeting included Mr. Haefner, Mr. Thongvahn, and Chief Dobesh. As before, Ms. Haefner—without offering specifics—claimed to have uncovered “serious misconduct” on the part of Plaintiff and that the City was planning to terminate him. When Plaintiff asked again what he had done to justify this, Ms. Haefner refused to provide more information.

41. On March 17, 2022, Plaintiff had one last meeting with Ms. Haefner, Chief Dobesh, and Mr. Thongvahn. The meeting was brief. Chief Dobesh started the meeting by telling Plaintiff he was being terminated for alleged serious misconduct. He then gave Plaintiff until the close of business on March 20, 2023 to “voluntarily” resign.

42. Knowing that he had done nothing that could justify his discharge, Plaintiff refused to resign from the RFD.

43. On March 21, 2023, Plaintiff received a “Notice of Intent to Terminate” from the City Manager. To date, the City has still not articulated a specific legitimate reason for terminating Plaintiff’s employment.

44. Plaintiff’s last day of employment with the City was March 29, 2023.

CAUSES OF ACTION

Count I **Retaliation**

(Minnesota Whistleblower’s Act, Minn. Stat. § 181.932)

45. Plaintiff incorporates by reference all the preceding paragraphs of this Complaint as if fully set forth herein.

46. Defendant is an “employer” and Plaintiff is an “employee” within the meaning of the Minnesota Whistleblower Act.

47. Minn. Stat. § 181.932, subd. 1(1) provides that it is unlawful for an employer to “discharge, discipline, threaten, or otherwise discriminate against, or penalize an employee” because the employee “in good faith, reports a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official[.]”

48. The Whistleblower Report is a report Plaintiff made to the City in good faith regarding a violation, or suspected violation, of a state law and/or a rule adopted pursuant to law.

49. Defendant discharged, disciplined, or otherwise discriminated against Plaintiff in violation of Minn. Stat. § 181.932 for making the Whistleblower Report.

50. As a direct and proximate result of Defendant violating the Minnesota Whistleblower Act, Plaintiff has suffered, and will continue to suffer, lost income, mental anguish and emotional distress, humiliation, loss of reputation, and other damages in excess of \$50,000.

51. Also as a result of the City’s unlawful conduct, Plaintiff is entitled to costs, disbursements, and reasonable attorneys’ fees incurred under Minn. Stat. § 181.935.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all counts where trial by jury is available.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Shea Chwialkowski respectfully prays for judgment against Defendant City of Richfield as follows:

a. For the practices complained of above to be found to violate the rights secured to Plaintiff by the Minnesota Whistleblower Act;

- b. For an award to Plaintiff against Defendant of all relief available under the Minnesota Whistleblower Act, as amended, Minn. Stat. § 181.931, *et seq.*, in amounts to be determined at trial, with interest on such amounts;
- c. For an award of any punitive damages under applicable law;
- d. For an award of compensatory damages arising from past and future loss of income, benefits, emotional distress, and other damages in excess of \$50,000.
- e. For attorneys' fees, costs, and disbursements;
- f. For such other relief available by statute; and
- g. For any other relief that the Court deems just and equitable.

May 8, 2023

Respectfully submitted,

By: /s/ Andrew Peters

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ACKNOWLEDGMENT

The undersigned acknowledges that: I am familiar with the terms of Minn. Stat. § 549.211, and that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party under subd. 2 in the event a party or an attorney acts in bad faith; asserts a claim or defense that is frivolous and that is costly to another party; asserts an unfounded position solely to delay the order and course of the proceedings or to harass; or commits a fraud upon the court.

May 8, 2023

/s/ Andrew Peters



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