

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21ST JUDICIAL CIRCUIT

KEITH WILDHABER,)
Plaintiff,)
v.)
SAINT LOUIS COUNTY, MISSOURI,)
Serve: 41 S. Central Avenue)
Clayton MO 63105)
Defendant.)

Case No. _____

Division/Judge _____

JURY TRIAL DEMANDED

PETITION

COMES NOW Plaintiff Keith Wildhaber (“Plaintiff”), by and through his undersigned counsel, and for his Petition against Defendant Saint Louis County, Missouri (hereinafter “Defendant” or “the County”), states as follows:

INTRODUCTION

1. This lawsuit is being brought by Plaintiff to seek redress for unlawful employment discrimination and retaliation. Plaintiff has worked as a police officer for Defendant Saint Louis County from May 1994 to the present. Because of his gender/sex, Plaintiff has been subjected to—and continues to be subjected to—unlawful employment discrimination by being denied multiple promotions. Defendant’s actions in denying Plaintiff multiple promotion opportunities for which he was qualified amount to a violation of the Missouri Human Rights Act (“MHRA”). Further, Defendant has retaliated against Plaintiff for engaging in activity that is legally protected by the MHRA.

PARTIES

2. Plaintiff is an adult male resident of the State of Missouri.

3. Defendant Saint Louis County, Missouri is a political subdivision of the State of Missouri, exists by reason of the Constitution and Laws of the State of Missouri, and acts under the color of State law.

JURISDICTION AND VENUE

4. Venue is proper in this Court because, upon information and belief, Plaintiff's employment with Defendant during times relevant occurred within St. Louis County, Missouri, and because the actions/events that gave rise to this Petition occurred within St. Louis County, Missouri. This Court maintains jurisdiction and venue over Plaintiff's claims brought herein pursuant to R.S.Mo. § 213.111 and/or § 508.010.

GENERAL ALLEGATIONS

Plaintiff's Employment Background with the County's Police Department

5. Plaintiff was hired by the St. Louis County Police Department as a Security Officer in May 1994, following a four-year stint in the U.S. Army.

6. In July 1997, Plaintiff was selected as a candidate for the St. Louis County Police Academy.

7. In December 1997, Plaintiff graduated from the St. Louis County Police Academy and was awarded his commission as a St. Louis County Police Officer.

8. In December 1997, Plaintiff began working as a Patrolman in the Affton Precinct.

9. In January 2006, Plaintiff transferred to the Detective Bureau and worked white collar investigations until July 2011.

10. In July 2011, Plaintiff was promoted to the rank of Sergeant.

11. From July 28, 2011 until May 2016, Plaintiff was assigned to and worked out of the Affton Precinct.

12. The Affton Precinct was a desirable work location for Plaintiff, primarily because it is convenient and located close to Plaintiff's home in Oakville, Missouri.

13. From January 5, 2016, until May 2016, Plaintiff worked on the afternoon shift (1pm to 11pm) out of the Affton Precinct.

14. Throughout his employment with the County, Plaintiff has received extremely positive feedback about his work performance. His written performance reviews consistently reflect that his performance "exceeds standards" or is "superior" in all rated categories.

Plaintiff's Application for Promotion to Lieutenant

15. In approximately 2014, not long after Jon Belmar became the County Police Chief, the County Police Department announced a new promotional process to fill positions for the rank of Lieutenant.

16. In approximately February 2014, Plaintiff first applied for a Lieutenant position.

17. Based on the criteria identified for the position, Plaintiff was qualified to apply for the position of Lieutenant.

18. Plaintiff took a written test and underwent an assessment, as did other candidates.

19. Plaintiff's scores in that promotional process ranked him #3 out of 26 total candidates.

20. Per the County's policy/practice, the candidates were divided into three groups: A, B, and C. The individuals in the A group are considered to be first in line for promotions, while individuals in the B and C groups generally are not considered for promotions, unless all of the individuals from the A group have been promoted.

21. Part of Plaintiff's duties as a Sergeant included checking on local restaurants in the evening as a safety precaution.

22. In approximately February 2014, while on duty, Plaintiff stopped by a restaurant called Bartolino's to check on that restaurant. Plaintiff was familiar with (and friendly with) the owner of Bartolino's, John Saracino, who was a member of the St. Louis County Board of Police Commissioners at that time. Mr. Saracino indicated that he had become aware that Plaintiff was applying for a promotion to a Lieutenant position with the County Police Department. Mr. Saracino told Plaintiff, "The command staff has a problem with your sexuality. If you ever want to see a white shirt [i.e., get a promotion], you should tone down your gayness."

23. The St. Louis County Police Department Board of Commissioners is a civilian oversight board representing the citizens of St. Louis County. The Board is the final authority for the control and supervision of the St. Louis County Police Department. The Board derives its authority from Section 4.270 of the St. Louis County Charter, where it states, "The board of police commissioners shall be in charge of the police department."

24. With respect to the promotional process for Lieutenant positions, there were nine individuals ranked in the A group based on A-list that was posted by the County Police Department on April 9, 2014. Those individuals were ranked as follows: (1) Pete Morrow; (2) Diane Leonard; (3) Keith Wildhaber; (4) Gerald Lohr; (5) Francis Gomez; (6) David Ryan; (7) Jason Law; (8) John Bielefeld; and (9) Jack Webb. All of the individuals on that list have since been promoted to the rank of Lieutenant, except Plaintiff and David Ryan.

25. David Ryan has had a history of disciplinary/performance issues and problems that have prevented him from being promoted. However, Plaintiff has a clean disciplinary history, excellent performance reviews, and a strong resume for being promoted to Lieutenant. Nonetheless, Plaintiff has not been promoted to the rank of Lieutenant.

26. From the A-list dated April 9, 2014, the following individuals were promoted to the rank of Lieutenant (with the dates of their promotions in parentheses): Pete Morrow (5/17/14); Diane Leonard (5/18/14); Gerald Lohr (5/17/14); Francis Gomez (4/1/16); Jason Law (5/17/14); John Bielefeld (7/13/14); and Jack Webb (1/4/15).

27. As of early 2015, there were two open Lieutenant positions, but Chief Belmar did not fill those positions at that time. At that time, three candidates from the April 9, 2014 A-list remained unpromoted: Keith Wildhaber, Francis Gomez, and David Ryan. Plaintiff asked one of his superiors why he was not being promoted, and he was told that there is one guy on that list (of three individuals) that Chief Belmar will not promote, and the Chief did not want to embarrass that one guy by promoting the other two.

28. Rather than fill the two open Lieutenant positions from the existing list of three candidates from the April 9, 2014 A-list, Chief Belmar announced a new promotional process on February 18, 2015.

29. This new promotional process essentially created a new A-list, whereby a fresh group of candidates were shuffled onto the A-list, along with the three candidates who had not been promoted from the prior A-list (Wildhaber, Gomez, and Ryan).

30. Plaintiff was allowed to retain his score from the previous A-list. As a result, Plaintiff was ranked #3 on the new A-list.

31. Since February 2015, Plaintiff has continued to be passed over for multiple promotions.

32. The following individuals have been promoted to Lieutenant from the new A-list dated February 18, 2015 (with dates of their promotions indicated in parentheses):

Matthew Brilllos (8/30/15); Ray Rice (8/30/15); Francis Gomez (4/1/16); Trent Van Buren (8/30/15); Steven Tucker (4/1/16); Bradley Kelling (10/18/15); and Jerry Kelly (4/1/16).

33. On or about May 11, 2016, Defendant promoted David Price to the rank of Lieutenant, effective May 11, 2016. Plaintiff applied for and was denied this promotion opportunity.

34. Defendant has refused to promote Plaintiff because he does not conform to the County's gender-based norms, expectations, and/or preferences. Mr. Saracino's comments to Plaintiff are direct evidence of sex/gender discrimination. That direct evidence is further buttressed by the fact that Plaintiff has received stellar performance reviews, has solid backing from his immediate supervisors (who have expressed surprise and displeasure about Plaintiff being continually passed over for promotions), and is more than qualified to hold the position of Lieutenant.

35. Over time, Plaintiff has made multiple complaints to Defendant's management employees about: (a) the fact that he has been continually passed over for promotions; (b) the comments made by Mr. Saracino, a member of the St. Louis County Police Department Board of Commissioners; and (c) being subjected to unlawful discrimination based on his sex/gender. Defendant has failed to take any action to investigate or take corrective action with respect to Plaintiff's multiple complaints.

Plaintiff's Exhaustion of Administrative Remedies

36. On April 1, 2016, Plaintiff dual-filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission and Missouri Commission on Human Rights, alleging unlawful employment discrimination due to the County's failure to promote him based on his sex/gender.

37. On May 13, 2016, St. Louis County issued Department Personnel Order 16-2210, which reassigned Plaintiff from the Affton Precinct to the City of Jennings Precinct, effective May 22, 2016. As a result of that reassignment, Plaintiff was transferred to work the midnight shift (8pm to 6am) in Jennings, Missouri, rather than his regular afternoon shift in Affton, Missouri. The City of Jennings Precinct is located approximately 27 miles away from Plaintiff's home, and over 20 miles away from the Affton Precinct.

38. On June 8, 2016, Plaintiff dual-filed a second Charge of Discrimination with the U.S. Equal Employment Opportunity Commission and Missouri Commission on Human Rights, alleging unlawful employment discrimination due to the County's failure to promote him based on his sex/gender, and also alleging unlawful retaliation.

39. On January 10, 2017, the Missouri Commission on Human Rights issued Plaintiff a notice of right to sue on each of Plaintiff's Charges of Discrimination, and Plaintiff thereafter filed this action in a timely manner. See EXHIBITS 1 and 2 attached hereto.

COUNT I: SEX/GENDER DISCRIMINATION
IN VIOLATION OF THE MISSOURI HUMAN RIGHTS ACT

40. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the paragraphs above as if fully set forth and restated herein.

41. Defendant St. Louis County is an "employer" within the scope and meaning of the MHRA.

42. Plaintiff is an "employee" of Defendant St. Louis County, as the term "employee" is defined by the MHRA.

43. The MHRA states that it shall be an unlawful employment practice for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any

individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's... sex..." Section 213.055.1 R.S.Mo.

44. On multiple occasions, Plaintiff has applied for a promotion to the rank of Lieutenant.

45. Since his original application in early 2014, Plaintiff has been qualified to be promoted to the rank of Lieutenant.

46. Defendant has discriminated unlawfully against Plaintiff on the basis of his sex/gender.

47. Defendant has denied Plaintiff promotion opportunities, and has otherwise discriminated against Plaintiff, because of Defendant's perception that Plaintiff does not adhere and conform to Defendant's gender-based expectations/preferences.

48. Defendant has denied Plaintiff promotion opportunities, and has otherwise discriminated against Plaintiff, because Defendant believes that Plaintiff does not fit the stereotypical norms of what a "male" should be.

49. Defendant has denied Plaintiff promotion opportunities, and has otherwise discriminated against Plaintiff, because Defendant believes that Plaintiff's behavior, mannerisms, and/or appearance do not fit the stereotypical norms of what a "male" should be.

50. When Defendant made the decisions to deny promotion opportunities to Plaintiff, Plaintiff's sex/gender—and in particular Defendant's belief of Plaintiff's non-conformance to Defendant's gender-based expectations and/or preferences—was at least a contributing factor in such decisions.

51. Defendant's actions and omissions, as aforesaid, constitute unlawful employment practices in violation of the MHRA, R.S.Mo. §213, *et seq.*

52. As a direct result of Defendant's unlawful employment practices, Plaintiff has been damaged in the form of lost wages and benefits of employment, future wages, emotional distress, humiliation, and diminished employment status.

53. Defendant's actions were intentional, willful, knowing, wanton and malicious, and in flagrant disregard for the rights of Plaintiff, and entitle Plaintiff to an award of punitive damages.

WHEREFORE, on Count I of this Petition, Plaintiff demands judgment against Defendant and respectfully requests: (1) a sum of money making Plaintiff whole for the harm caused, including compensatory damages, back pay, front pay, lost benefits, and damages for emotional distress, humiliation, and diminished employment status; (2) temporary, preliminary, and/or permanent injunctive relief, including but not limited to an Order requiring Defendant to promote Plaintiff immediately to the rank of Lieutenant and to provide Plaintiff with the appropriate level of pay, benefits, duties, and responsibilities consistent with the position of Lieutenant; (3) punitive damages to punish and deter Defendant and others from like conduct; (4) costs and expenses of litigation, and a reasonable sum as and for attorneys' fees; (5) pre-judgment interest; and (6) such other and further equitable and legal relief as this Court deems just and proper.

COUNT II: RETALIATION
IN VIOLATION OF THE MISSOURI HUMAN RIGHTS ACT

54. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the paragraphs above as if fully set forth and restated herein.

55. The MHRA states that it shall be an unlawful discriminatory practice "[t]o retaliate or discriminate in any manner against any other person because such person has opposed any practice prohibited by this chapter or because such person has filed a complaint, testified, assisted, or participated in any investigation, proceeding or hearing conducted pursuant to this chapter." Section 213.070 R.S.Mo.

56. Plaintiff exercised legally protected rights and engaged in activity legally protected by the MHRA by virtue of the following actions: (a) making multiple complaints to Defendant's managerial employees about being discriminated against on the basis of his sex/gender; (b) dual-filing his initial Charge of Discrimination with the EEOC and MCHR on or about April 1, 2016; and (c) participating in the EEOC's processing and investigation of his Charge of Discrimination.

57. On or about May 13, 2016, Defendant issued Department Personnel Order 16-2210, whereby Defendant transferred Plaintiff to work on an undesirable shift at an undesirable work location.

58. Plaintiff's exercise of legally protected activity, as referenced above, was at least a contributing factor in Defendant's decision to transfer Plaintiff to the midnight shift at the Jennings Precinct.

59. Further, Plaintiff's exercise of legally protected activity, as referenced above, has been at least a contributing factor in Defendant's ongoing failure to promote Plaintiff to the rank of Lieutenant.

60. Defendant's actions and omissions, as aforesaid, constitute unlawful retaliation in violation of the Missouri Human Rights Act., R.S.Mo. §213, *et seq.*

61. As a direct result of Defendant's unlawful retaliation, Plaintiff has been damaged in the form of lost wages and benefits, emotional distress, humiliation, and diminished employment status.

62. Defendant's actions were intentional, willful, knowing, wanton and malicious, and in flagrant disregard for the rights of Plaintiff, and entitle Plaintiff to an award of punitive damages.

WHEREFORE, on Count II of this Petition, Plaintiff demands judgment against Defendant and respectfully requests: (1) a sum of money making Plaintiff whole for the harm caused,

including compensatory damages, back pay, front pay, lost benefits, and damages for emotional distress, humiliation, and diminished employment status; (2); temporary, preliminary, and/or permanent injunctive relief, including but not limited to an Order requiring Defendant to immediately promote Plaintiff to the rank of Lieutenant and provide Plaintiff with the appropriate level of pay, benefits, duties, and responsibilities consistent with the position of Licutenant; (3) punitive damages to punish and deter Defendant and others from like conduct; (4) costs and expenses of litigation, and a reasonable sum as and for attorneys' fees; (5) pre-judgment interest; and (6) such other and further equitable and legal relief as this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS TRIABLE TO A JURY.

Respectfully submitted,

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