

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

SUPERIOR COURT DEPARTMENT
Civil Action No:1876CV00275

ROBERTA J. SARNACKI,
Plaintiff

v.

TOWN OF OTIS,
Defendant

**JOINT PRETRIAL
MEMORANDUM**

Plaintiff, the former Chief of Police in Otis, MA, was not re-appointed in June of 2018. She asserts that this was illegal, based on two separate sets of facts. The first is the violating of c. 41 s. 1080, which requires one year's notice prior to non-renewal for police chiefs who are not covered by a written employment agreement. The second is the alleged retaliatory nature of the discharge, in violation of c. 149 s. 185.

1. Agreed Facts

1. Plaintiff Roberta J. Sarnacki is an individual residing in East Otis, Berkshire County, Massachusetts.
2. Plaintiff Sarnacki was the Chief of Police of Otis from August 13, 2009, through June 30, 2018.
3. Defendant Town of Otis is a Town organized and existing under the laws of the Commonwealth of Massachusetts and located in Berkshire County, Massachusetts.
4. On or about August 13, 2009, Plaintiff was appointed as Police Chief for the Defendant Town of Otis by the Town's Board of Selectmen. The appointment of August 13, 2009, was without a written contract.
5. On or about June 22, 2010, Plaintiff and Defendant entered into an "Employment Contract" in which Plaintiff was employed by Defendant as Police Chief for a term stated to be June 22, 2010, to June 30, 2011.
6. Plaintiff served as Police Chief to June 30, 2011.
7. Beyond that, between July 1, 2011 and June 30, 2018, Defendant's Board of Selectmen reappointed Plaintiff as Police Chief for seven successive one-year terms.

8. At the Annual Town Meeting in each year between 2011 and 2018 (usually held in May), the appropriation for the Police Department, including the Chief's salary, was approved by the Town.

9. On June 12, 2018, the Otis Board of Selectman voted not to reappoint Plaintiff as Police Chief for an additional term. Thus, her employment ended on June 30, 2018. The letter so advising her was dated June 19, 2018.

10. Selectboard member William Hiller recused himself from the vote and discussion regarding Plaintiff's reappointment on June 19, 2018.

2. Expected Evidence

a. Plaintiff's Evidence

Contract Claims

Plaintiff was appointed Otis Chief of Police for nine successive terms between June 2009 and June 2018. The only written employment agreement between plaintiff and the town was the 2010-2011 contract ("Employment Agreement"). At no other time, including during those seven subsequent one-year terms of employment, did the parties enter any written employment contract or agreement governing Plaintiff's employment as Police Chief.

The Selectboard voted in June 2018 not to reappoint her as Chief of Police. She was not given any prior written notice of this action.

There is no evidence that the plaintiff intended that the terms of the written one-year contract would apply to any future reappointments. In fact, plaintiff will testify that she did not have such an understanding or intention. And there is no evidence that the Selectboard had any such intention. For instance, at the July 24, 2012, Select Board meeting the Board noted that Plaintiff was on a one-year appointment without a contract, and that she could consequently be removed only on a year's notice. And in a Selectboard meeting on September 12, 2017, Town Counsel observed that a contract with the Chief would facilitate the resolution of certain issues (thus implying that no contract then existed).

For the year July 2018 to June 2019 (the additional year that she would have been employed had she received the statutory notice), Plaintiff would have received the same as for the previous year plus a two percent COLA increase. This would have totaled \$34,785.32.

During that same year, plaintiff would also be entitled to access to health insurance, which would have resulted in savings to her from reduced out-of-pocket expenses and/or premiums, and to other fringe benefits including but not limited to vacation and personal days. Plaintiff estimates the value of such fringe benefits as approximately \$11,000.

Whistleblower claims

On or about August 15, 2017, during the pendency of criminal charges brought by Plaintiff against a certain juvenile, Plaintiff was asked by Selectman Chair William Hiller to drop the said charges in exchange for the juvenile's family agreeing not to sue the Plaintiff. The juvenile's family was close to Hiller, both personally and in business.

Plaintiff objected to and refused Selectman William Hiller's demand. Plaintiff advised Hiller that she believed that his conduct in making the said request, was in her view a violation of law and a risk to public health and/or safety.

Plaintiff reasonably believed that Selectman Hiller's said demand was an attempt by him to unlawfully bribe and influence her in the performance of her duty, done with a corrupt purpose and purely for private gain, and Plaintiff reasonably believed that acceding to Selectman Hiller's demand would constitute unlawful selective law enforcement on her part and the corrupt and unlawful use of her office for her own private gain.

On or about December 7, 2017, Plaintiff provided information to and filed a complaint with the State Ethics Commission relative to said actions of Selectman William Hiller.

On October 5, 2017, Plaintiff filed a Complaint with the Otis Selectboard alleging that the Board had violated the Open Meeting Law (M.G.L. c. 30A, § 18-25) by acting inappropriately concerning an Executive Session where she was to be discussed. Because she received no response, On November 28, 2017, Plaintiff filed a complaint with the Division of Open Government at the Attorney General's Office seeking review. The Division eventually determined that there had been no violation.

On January 10, 2018, Plaintiff filed a Complaint with the Otis Selectboard alleging that the Board had violated the Open Meeting Law (M.G.L. c. 30A, § 18-25) by deliberating on a matter involving her department outside an Open Meeting. Because she was not satisfied with the Board's response, On April 6, 2018, Plaintiff filed a complaint with the Division of Open Government at the Attorney General's Office seeking review. The Division eventually determined that the Board had indeed violated the law, and cautioned it that similar future violations could be considered evidence of intent.

Plaintiff's non-reappointment was a retaliatory action within the meaning of M.G.L. c. 149, § 185.

Consequential Damages

For the year July 2018 to June 2019 (the additional year that she would have been employed had she received the statutory notice), Plaintiff would have received the same as for the previous year plus a two percent COLA increase. This would have totaled \$34,785.32. During that same year, plaintiff would also be entitled to access to health insurance, which would have resulted in savings to her from reduced out-of-pocket expenses and/or premiums, and to other fringe benefits including but not limited to vacation and personal days. Plaintiff estimates the value of such fringe benefits as approximately \$11,000.

Failure to Pay Required Fringe Benefits for 2017-2018

Pursuant to Defendant's Personnel Policies, Defendant was required to pay Plaintiff fringe benefits for the year 2017-18, including but not limited to vacation, personal days, and eligibility for health insurance. Defendant did not pay such fringe benefits.

b. Defendant's Evidence

The Defendant expects the evidence to show that the Plaintiff's employment was subject to a contract at the time of non-renewal, and that the Town complied with the provisions of that contract. The Defendant expects the evidence to show that Plaintiff's nonrenewal was unrelated to the alleged Whistleblowing activity. There were numerous complaints about the Plaintiff from the public, including, but not limited, to complaints that she was not impartial, but rather was guided by personal motivations in how she exercised the power of her position, that she was overzealous in how she policed certain members of the community, and that she was not professional in her communication with the public. The Defendant expects the evidence to show that Selectboard members voted to non-renew the Plaintiff for non-retaliatory reasons including responding to public complaints, a belief that it was time for a change in leadership of the police, and the belief by one Selectboard member that the Plaintiff had allowed his foster children to be shown in the media, endangering their placement with him.

3. Agreed Description for Jury

The parties have been able to agree on a description. The versions preferred by each are below:

Plaintiff's Version

Plaintiff was employed by the defendant Town of Otis as the Police Chief from August 13, 2009, through June 30, 2018. On or about June 22, 2010, Plaintiff and Defendant entered into an "Employment Agreement", which stated she could be terminated upon 30 days written notice, and also stated that the term of the said Agreement "shall begin on July 1, 2010 and terminate on June 30, 2011". Plaintiff was subsequently re-appointed as chief for seven successive one-year terms, through June 30, 2018. The parties disagree as to whether the parties both intended that said written Agreement applied to the periods of said successive re-appointments. On June 22, 2018, the Town declined to reappoint her for the period beginning July 1, 2018 and thereafter. Plaintiff alleges that she was non-renewed in retaliation for engaging in certain protected activity. Defendant denies this and asserts she was non-renewed for legitimate non-retaliatory reasons. Plaintiff also alleges that the Town failed to pay her fringe benefits during the year 2017-2018 and that this failure violated the terms of her employment.

Defendant's Version

Plaintiff was employed by the defendant Town of Otis as the Police Chief from August 13, 2009, through June 30, 2018 when the Selectboard voted not to renew her employment. Plaintiff alleges she was entitled to a year's notice prior to non-renewal because her employment

was not covered by a contract. Defendant disputes this and contends her employment was covered by a contract which allowed her to be non-renewed upon 30 days' notice. Plaintiff also alleges that she was non-renewed in retaliation for engaging in certain protected activity. Defendant denies this and asserts she was non-renewed for legitimate non-retaliatory reasons.

4. Significant Legal Issues

a. Plaintiff:

Whether the termination provision of the written contract, as a matter of law, continued in effect after June 30, 2018, or, as a matter of law, did not so continue.

b. Defendant:

Defendant objects to the numerous witnesses listed in this pretrial memorandum who were not disclosed during discovery. Specifically: Thomas Nadolny, Kris McDonough, Marc Portieri, William Walsh, Eric Munson, Ed Deming, Michael Morrison, Kevin Hennessey, Richard Phair, and Sandy Pinkham.

5. List of Witnesses Anticipated to be Called

Plaintiff's Witnesses

The Plaintiff

William Hiller

Donald Hawley

Gary Thomas

Christopher Morris

Heather Gray

Thomas Nadolny, Principal and Superintendent, Farmington River School District

Kris McDonough, current Otis and Becket Chief of Police

Marc Portieri, West Stockbridge Police Chief

William Walsh, Great Barrington Police Chief, Retired

Eric Munson, Sheffield Police Chief

Ed Deming, Tolland Police Chief, Retired

Michael Morrison, Sandisfield Police Chief

Kevin Hennessy, Russell Police Chief

Miguel Santana, Otis Police Officer

Charles Whiting, Otis Police Officer

Richard Phair, Otis Fire Chief

Sandy Pinkham, Former Otis Fire Chief, retired

Any witness designated by Defendant.

Defendant's Witnesses

Defendant reserves the right to call any witness listed by Plaintiff. In addition:

Michael O'Brien

Mark Amado

6. List of Expert Witnesses

None

7. Estimated Length of Trial

Two to three full days

8. Itemization of Damages

Plaintiff asserts as follows:

A. Wage and benefit loss for one year: (including reasonably expected outside details etc. as consequential damages, as this is a contract claim): \$45,785

B. Unpaid benefit days from last year of work: \$3151

C. Un-reimbursed telephone charges (Jan-June 2018) - \$685

Total Single Damages – \$49,621

Note – Statutory interest on all of the above to date is about \$17,000

Multiple Damages Pursuant to Whistleblower Claim - The Whistleblower statute permits the award of double or triple damages. The circumstances of Ms. Sarnacki's discharge

are especially egregious because she was punished for enforcing a law which was designed for the protection of the public, as well as for the protection of the late Mr. O'Brien. Because Selectboard members are charged with a public duty to enforce the law fairly (and here, there is strong evidence that plaintiff was encouraged in precisely the opposite direction), their conduct is subject to "a heightened degree of reprehensibility". See *Tryon v. MBTA*, 98 MassApp.Ct. 673 (2020). It is also pertinent in this regard that there was a long-term grudge held against plaintiff by one or more Selectmen, and that there was an element of planning in their retaliatory acts.

Triple the actual damages would exceed \$175,000.

In addition, attorney fees are available on the Whistleblower Claim; work to date (on whistleblower claim only) approximates \$25,000.

9. Certification Concerning Settlement Discussions

The parties have discussed settlement. At the request of counsel for defendant, plaintiff submitted a detailed settlement proposal over two months ago. There has been no response.

10. Discussion of Case-Specific Management

There has been no discussion of case-specific management.

____/s/Hunter S
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