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Attorneys for Plaintiff,
Stephen E. McGuire

RECEIVED/FILED
Superior Court of New Jersey
MAR 16 2011
CIVIL CASE MANAGEMENT
UNION COUNTY

STEPHEN MCGUIRE,

Plaintiff,

vs.

UNION COUNTY PROSECUTOR'S OFFICE,
OF THE STATE OF NEW JERSEY;
PROSECUTOR OF UNION COUNTY,
THEODORE J. ROMANKOW; and ROBERT
BUCCINO, CHIEF OF DETECTIVES, UNION
COUNTY PROSECUTOR'S OFFICE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

UNN-L- 1070-11
DOCKET NO.

CIVIL ACTION

COMPLAINT IN LIEU OF
PREROGATIVE WRITS

Plaintiff, Stephen E. McGuire ("Plaintiff"), residing at 365 Taylors Mill Road, Manalapan, State of New Jersey seeking *de novo* review of a local agency disciplinary action by way of Complaint in Lieu of Prerogative Writs against the Defendants, Union County Prosecutor's Office ("Prosecutor's Office"), Theodore J. Romankow ("Romankow"), Prosecutor of Union County, and Robert T. Buccino ("Buccino"), Chief of Detectives for the Union County Prosecutor's Office, (collectively, "Defendants") says:

PARTIES

1. The Union County Prosecutor's Office is a public employer as that term is defined by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1, *et seq.*, and located in the County of Union. Its offices are located at 32 Rahway Avenue, Elizabeth, New Jersey. At all

material times, the Prosecutor's Office maintained a paid department of county investigators within its borders pursuant to N.J.S.A. 2A:157-10, et seq.

2. Theodore J. Romankow is the Prosecutor for Union County. He maintains an office located at 32 Rahway Avenue, Elizabeth, New Jersey. At all material times, Romankow was the "appropriate authority" for the purposes of N.J.S.A. 2A:157-10 for the Prosecutor's Office and its county investigators.

3. Robert T. Buccino is the Chief of Detectives for the Prosecutor's Office. He maintains an office located at 32 Rahway Avenue, Elizabeth, New Jersey. At all material times, Buccino was the Chief of Detective's for the Prosecutor's Office.

4. At all material times, Plaintiff was employed as a sworn county investigator by the Union County Prosecutor's Office and held the rank of detective.

JURISDICTION

5. The jurisdiction of this Court is invoked pursuant to R. 4:69-1 and N.J.S.A. 2A:157.10.7, which provides county investigators with the right to a *de novo* review of departmental discipline in the Superior Court of New Jersey.

6. With respect to all matters described herein, the Defendants were served with a Notice of Appeal within ten (10) days after written notice of suspension was provided to Plaintiff, in accordance with N.J.S.A. 2A:157-10.7.

7. Title 11A (Civil Service) of the Revised Statutes does not apply to county investigators employed by the Union County Prosecutor's Office.

8. Venue is proper in this court because the Prosecutor's Office is located within Union County, and all relevant acts occurred in Union County in violation of New Jersey statutes, New Jersey common law, and/or the Constitution of the State of New Jersey.

BACKGROUND FACTS

9. Plaintiff was hired by the Prosecutor's Office as a county investigator on September 16, 2003 and currently holds the rank of detective.

10. Plaintiff is also the president of the Policemen's Benevolent Association, Local No. 250 ("PBA Local 250"), and has served in this capacity since June 2008.

11. PBA Local 250 is the majority representative for all county investigators employed by the Prosecutor's Office.

12. On November 2, 2010, Plaintiff sent an email in his capacity as union president to all unit members of PBA Local 250 to inform them of a recent Arbitration Award which sustained a grievance in favor of the PBA.

13. The subject heading of the email expressly stated it was a message from the PBA president and the title of the email indicated that its content was to explain the significance of an Arbitration Award rendered by Arbitrator Thomas Hartigan on October 28, 2010.

14. The content of the November 2, 2010 email contained an analysis of Arbitrator Hartigan's Award and explained the relevance of the decision to PBA Local 250 and its members.

15. On or about November 18, 2010, Plaintiff was served with a Preliminary Notice of Disciplinary Action by the Prosecutor's Office for alleged violations of the Prosecutor's Office's Rules and Regulations. These charges alleged violations of General Rules and Regulations: 3:1 Professional Conduct; 3:1-2 Loyalty; 1:4 Definition of Terms; and 1:4-10 Insubordination and a recommended suspension because of the email that he distributed solely to PBA Local 250 unit members on November 2, 2010.

16. On January 24, 2011, a disciplinary hearing was conducted regarding the

disciplinary charges initiated against Plaintiff before Hearing Officer and First Assistant Prosecutor, Albert Cernadas, Jr. Esq. The parties were present and had an opportunity to present evidence and testimony on their behalf.

17. On or about February 3, 2011, Hearing Officer Cernadas Jr. Esq. issued a decision finding Plaintiff guilty of all charges and sustaining a five (5) day suspension against Plaintiff.

18. Plaintiff served his five (5) day suspension without pay from February 28, 2011 until March 4, 2011.

19. As a result of this suspension without just cause, Plaintiff brings this action seeking to overturn the Hearing Officer's decision pursuant to N.J.S.A. 2A:157-10.7, the common law of the State of New Jersey, and the United States and New Jersey Constitutions.

COUNT ONE

20. Plaintiff incorporates the allegations contained in paragraphs 1 through 19 as if fully set forth herein.

21. The Prosecutor's Office's Rules and Regulations regarding 3:1-1 Professional Conduct requires that employees of the Prosecutor's Office in both their private and public lives shall conduct themselves in a manner that will not reflect adversely on the reputation of the Prosecutor's Office.

22. Defendants have not proven the charge that the content of Plaintiff's email violated its General Rules and Regulations for 3:1 Professional Conduct and therefore, have acted in violation of N.J.S.A. 2A:157-10.

COUNT TWO

23. Plaintiff incorporates the allegations contained in paragraphs 1 through 22 as if fully set forth herein.

24. The Prosecutor's Office's Rules and Regulations regarding 3:1-2 Loyalty requires

that employees of the Prosecutor's Office shall be loyal to the Prosecutor's Office and to all its employees, consistent with law, good order and discipline.

25. Defendants have not proven the charge that the content of Plaintiff's email violated its General Rules and Regulations for 3:1-2 Loyalty and therefore, have acted in violation of N.J.S.A. 2A:157-10.

COUNT THREE

26. Plaintiff incorporates the allegations contained in paragraphs 1 through 25 as if fully set forth herein.

27. The Prosecutor's Office's Rules and Regulations regarding 1:4-10 Definition of Terms for Insubordination is the failure or deliberate refusal of any members of the Prosecutor's Office to obey a lawful order given by the Prosecutor, his assistants, a Superior Officer or Supervisor; ridiculing or demeaning the Prosecutor, his designee, a Supervisor, a Superior Officer or his order, whether in or out of his presence; or disrespectful, mutinous, insolent or abusive language directed toward the Prosecutor, his assistants, a Superior Officer or a Supervisor.

28. Defendants' have not proven the charge that the content of Plaintiff's email violated its General Rules and Regulations for 1:4 Definition of Terms and therefore, have acted in violation of N.J.S.A. 2A:157-10.

COUNT FOUR

29. Plaintiff incorporates the allegations contained in paragraphs 1 through 28 as if fully set forth herein.

30. The penalty administered to Plaintiff consisting of a five (5) day suspension is too severe in this case and violates the mandates of Town of West New York v. Bock, 38 N.J. 500 (1962) and its progeny.

COUNT FIVE

31. Plaintiff incorporates the allegations contained in paragraphs 1 through 30 as if fully set forth herein.

32. Defendants have violated Plaintiff's First Amendment rights to free speech and to petition the government as guaranteed by the United States Constitution in violation of 42 U.S.C.A. §1983 by disciplining and retaliating against Plaintiff because of his protected speech concerning his union activity.

33. In violation of 42 U.S.C.A. §1983, Defendants violated Plaintiff's Constitutional rights by taking disciplinary action against him on the basis of his protected associations under the First Amendment to the United States Constitution.

COUNT SIX

34. Plaintiff incorporates the allegations contained in paragraphs 1 through 33 as if fully set forth herein.

35. Defendants have violated Plaintiff's rights as guaranteed by Article 1, Section 6 of the Constitution of the State of New Jersey by retaliating against Plaintiff because of his protected speech and associations based on his union activity.

WHEREFORE, Plaintiff, Stephen McGuire demands judgment against Defendants as follows:

- a) Dismissing the sustained disciplinary charges dated February 3, 2011;
- b) Reimbursing Plaintiff for all lost pay and benefits pursuant to N.J.S.A. 2A:157-10.7;
- c) Ordering Defendants to pay for all attorneys' fees and costs associated with representing Plaintiff in this matter pursuant to N.J.S.A. 2A:157-10.8 and 42 U.S.C.A. § 1988 (b);
- d) Compensatory damages, including but not limited to damages for economic losses, back pay, front pay, pain and suffering, emotional distress and psychological injury.
- e) Damages for humiliation and harm to reputation; and
- f) Such other relief as this Court deems just and equitable.

Respectfully submitted,

METS SCHIRO & MCGOVERN, LLP
Attorneys for Stephen McGuire

By: 
LEONARD C. SCHIRO

Dated: March 15, 2011

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies, on information and belief, as follows:

1. The matter in controversy is the subject of an Unfair Practice Charge filed with the Public Employment Relations Commission under Docket CO 2011-217, but is not the subject of any action pending in any court or of a pending arbitration proceeding.

2. No other action or arbitration proceeding is contemplated.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

METS SCHIRO & MCGOVERN, LLP
Attorneys for Stephen E. McGuire

By: 
LEONARD C. SCHIRO

Dated: March 15, 2011

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Leonard C. Schiro, Esq. is hereby designated as Trial Counsel in this matter.

METS SCHIRO & MCGOVERN, LLP
Attorneys for Stephen E. McGuire

By: 

LEONARD C. SCHIRO

Dated: March 15, 2011

CERTIFICATION PURSUANT TO R. 4:69-4

Pursuant to Rule 4:69-4, I hereby certify that all necessary transcripts in the underlying local agency proceeding have been ordered. Pursuant to N.J.S.A. 2A:157-10.7, the Prosecutor's Office will provide all transcripts to the court.

METS SCHIRO & MCGOVERN, LLP
Attorneys for Stephen E. McGuire

By: 

LEONARD C. SCHIRO

Dated: March 15, 2011

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues so triable.

METS SCHIRO & MCGOVERN, LLP
Attorneys for Stephen E. McGuire

By: 

LEONARD C. SCHIRO

Dated: March 15, 2011



COUNTY OF UNION

Part C - GOVERNMENT RECORDS REQUEST RESPONSE

Requestor: Tina Renner - UCWA

Request Date: 4/21/11

- Document(s) provided: one file pages, at a total cost of: no fee. Item 12: Complaint Stephen McGuire v. UC, cost: _____
- Special Service Charge imposed - Reason: _____
- Document(s) have been inspected by the requestor on the date shown below: _____ documents, _____ total pages
- Document(s) not provided (see below)

Prosecutor's Office et al

The document(s) you have requested that are checked below are NOT being provided because the document(s) are considered privileged or are otherwise exempt from public access, as provided by applicable law:

- Privileged or Protected Category**
- Advisory, Consultative or Deliberative material
 - Autopsy Photos / Video
 - Attorney-Client Privilege Information
 - Computer Security Information
 - Criminal Investigatory Records
 - Credit Card Numbers
 - Domestic Security (Sabotage or Terrorism)
 - Grievance Information with public employer
 - Drivers' License Numbers
 - Electronic Surveillance Materials
 - Emergency or Security Information or Procedures
 - Employee Sexual Harassment Complaints
 - Fingerprint Cards
 - Individual's Medical, Financial, or Tax records
 - Insurance Communications
 - Investigation in Progress
 - Labor Negotiation Information (strategy or positions)
 - Personnel or Pension Records
 - Photographs of Crime Scene
 - Proprietary Information
 - Reasonable Expectation of Privacy
 - Resumes of unsuccessful applicants
 - Safety of persons or the public
 - Security Measures and Surveillance Techniques
 - Social Security Numbers
 - Test Questions, Scoring Keys, or other Exam Data
 - Victim records
 - Record has been destroyed/not retained pursuant to:
 - Other

- Authority for Denial or Redaction**
- N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-1.1, et seq.
 - Executive Order 21 (McGreevey)
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 2A:156A-19
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-1.1, et seq.
 - Executive Order 9 (Hughes)
 - Executive Order 26 (McGreevey)
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-3.a
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-10
 - Executive Order 9 (Hughes)
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-1.1, et seq.
 - Executive Order 26 (McGreevey)
 - Executive Order 69 (Whitman)
 - N.J.S.A. 47:1A-1.1, et seq.
 - N.J.S.A. 47:1A-1.1, et seq.
 - Executive Order 26 (McGreevey)
 - N.J.S.A. 47:1A-1.1; N.J.S.A. 2A:82-46b
 - Records Retention and Disposition Schedule

You have a right to appeal this decision that the documents requested are not accessible. You may take your appeal to the Government Records Council (GRC) or to the New Jersey Superior Court as provided by N.J.S.A. 47:1A-6 and 7. Please see the attached "Part D - Procedures to Challenge Denial of Access to Government Records" and GRC information.

Date: 4/27/11

County Official

ACKNOWLEDGMENT

I hereby acknowledge that I have received copies of, or have been permitted to view/inspect, the documents requested except for any documents specifically listed above on which a determination has been made that the documents could not be provided in accordance with applicable law. If any documents have not been provided, I have received information as to the procedures for an appeal of the determination.

Date: _____

Requestor's Signature

Version 6/09 (prior editions obsolete)