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Attorneys for Plaintiff, Nicholas Burke

NICHOLAS BURKE,

Plaintiff,

v.

CITY OF HOBOKEN and JOHN DOES 1
THROUGH 5,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO.:

Civil Action

COMPLAINT

Plaintiff, Nicholas Burke (“Plaintiff”), by and through his attorney, Brian S. Schiller, Esq., of the Law Office of Brian Schiller LLC, upon information and belief, by way of Complaint against the noted Defendants, alleges as follows:

PRELIMINARY STATEMENT

1. This is an action brought by the Plaintiff against his former employer, the City of Hoboken, and other fictitious individuals (collectively, the “Defendants”). Plaintiff seeks judgment against the Defendants for relief prescribed under the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. (“CEPA”).

2. Over the course of his twenty-six (26) year career as Hoboken Police Officer, Plaintiff gave his all to the citizens of the City of Hoboken and to his coworkers. He prided himself on doing what was right, as well as standing up for what was right. On several occasions, he

objected to and reported unlawful policies, practices, and violations of the law within the Hoboken Police Department. As a result of same, Plaintiff was subjected to unlawful retaliation in violation of CEPA.

JURISDICTION AND VENUE

3. This is an action in a case of actual controversy and is brought pursuant to the Rules Governing the Courts of the State of New Jersey. Venue is proper in Hudson County pursuant to Rule 4:2-3 of the Rules Governing the Courts of the State of New Jersey inasmuch as the claims arose in said County.

THE PARTIES

4. At all times relevant hereto, Plaintiff was an employee of the City of Hoboken within the meaning of CEPA.

5. At all relevant times hereto, Defendant, City of Hoboken (“City”), was a municipality duly organized and existing under the laws of the state of New Jersey and was an employer within the meaning of CEPA.

6. At all times relevant hereto, Defendants John Does 1 through 5, being fictitious identities and representing unnamed agents, servants, and employees of the City, violated Plaintiff’s rights and/or were a proximate cause or substantial factor of Plaintiff’s damages. They are sued in their individual and official capacities.

7. The City is a Civil Service jurisdiction in that the operation of the Hoboken Police Department (“HPD” and/or “Department”) is governed by applicable Civil Service statutes and regulations.

FACTS COMMON TO ALL COUNTS

8. Plaintiff began his employment with the City as a patrol officer for HPD in 1995.

9. Over the course of his career, Plaintiff received numerous Commendations, Recognitions of Service, Honorable Service Awards, and Exceptional Service Awards. In 2007, Plaintiff was named Police Officer of the Year.

10. Indeed, Plaintiff, at all times during his employment with the City performed his duties in a competent and thorough manner, and he has no history of any major discipline, let alone any significant disciplinary history whatsoever.

11. On March 23, 2017, Plaintiff and three other HDP police officers were called to the Chiefs office where former Chief Kenneth Ferrante (“Ferrante”) advised them that they were being promoted the following week. At that meeting, Ferrante stated that Plaintiff would be the next Detective Sergeant of the Investigations Bureau at the end of 2017 upon the impending retirement of Sergeant William Vera (“Vera”).

12. The Investigations Bureau for the HPD is considered by many to be a prestigious detail, and Plaintiff was excited at the opportunity to serve the City as a Sergeant in the Investigations Bureau, a unit which he had just served three years in as a Detective.

13. Likewise, Ferrante knew that Plaintiff had a strong desire to return to the Investigations Bureau as a Sergeant.

14. On or about March 24, 2017, a personnel order was issued which set forth certain promotions, including that of the Plaintiff, who was to be promoted to the rank of Sergeant effective March 27, 2017.

15. On that same date, March 24, 2017, a Personnel Order was issued which stated that Plaintiff would be transferred to the midnight shift effective March 28, 2017.

16. On March 26, 2017, Plaintiff was served with an Employee Performance Notice from Captain Daniel LoBue (“LoBue”). The notice was in the form of a Reprimand and stated the following:

“You are hereby served with a written reprimand for an act of INSUBORDINATION, a clear violation of the Rule and Regulations of the Hoboken Police Department. This reprimand is issued proactively, in that beyond a shadow of a doubt, you will certainly perform an act of some sort that rises to this level. Be advised that progressive discipline will follow.”

17. On or about March 27, 2017, Plaintiff was promoted to the rank of Sergeant.

18. Nonetheless, pending and prior to the retirement of Vera, on March 28, 2017, Plaintiff was transferred to the midnight shift, where he reported directly to Lieutenant James Peck (“Peck”).

19. The transfer of Plaintiff to the midnight shift was out of the ordinary, given the fact that Plaintiff had over 20 years of impeccable service with the Department and considering there were sixteen (16) other Sergeants with considerably less seniority.

20. It was known around the Department that Plaintiff worked tirelessly for the Department, through both his assigned schedule and through the Outside Employment Program (“O.E.P.”), oftentimes collectively working 68-70 hours per week.

21. In fact, in and around 2017, Plaintiff logged the most hours of all HPD police officers through the O.E.P., mainly due to the fact that Plaintiff was the only source of income for his family.

22. As a result of his heavy workload through the O.E.P., Plaintiff was, at times, earning more compensation in wages than Ferrante, which did not sit well with Ferrante.

23. In or about the Summer of 2017, Plaintiff was the subject of an audit conducted by the Attorney General’s Office concerning the number of hours Plaintiff worked under the O.E.P.

24. Upon information and belief, Ferrante was the individual who caused the audit to occur.

25. This audit came around the same time that Ferrante stated that Plaintiff could “be left to die on the midnight [shift].”

26. Upon information and belief, Plaintiff was the only member of the Department who was being investigated as part of the Attorney General’s audit.

27. The Attorney General’s Office’s O.E.P. audit into Plaintiff was concluded and confirmed that Plaintiff had not engaged in any wrongdoing whatsoever, and at the same confirmed that Plaintiff was a dedicated worker, both to the Department and to his family.

28. When Vera retired in June 2018, Plaintiff was not transferred to the Investigations Bureau.

29. Throughout 2017 and well into 2018, Plaintiff was subjected to a hostile work atmosphere at the hand of Peck.

30. In or around the Spring/Summer of 2018, Plaintiff was involved in the arrest of a suspect who robbed and assaulted a victim within the City. Thereafter, Plaintiff sought to charge the suspect with robbery and assault. Peck apparently only wanted to authorize a minor charge of theft. Plaintiff spoke up and informed Peck of the facts and allegations and as to the reasons why the suspect needed to be charged with robbery and assault. In response, Peck lashed out at Plaintiff in front of other officers and claimed that Plaintiff was incorrect, and that Plaintiff should not question his authority.

31. The following day, Plaintiff submitted a memorandum to the Professional Standards Bureau documenting Peck’s inappropriate conduct, both from the prior day and from at least one other occasion.

32. In submitting the memorandum, Plaintiff believed that Peck was in violation of law and/or public policy, and/or rules or regulations promulgated pursuant to law and/or public policy.

33. As a result of Plaintiff's memorandum, an Internal Affairs investigation began into Peck's misconduct. After Plaintiff and several other officers were interviewed, the investigation was turned over to the City, who hired a law firm to continue the investigation, as rampant allegations of misconduct came to light concerning Peck.

34. The investigation spanned several weeks as well over forty (40) HPD police officers were interviewed concerning Peck.

35. Upon information and belief, a large myriad of the officers interviewed by the law firm spoke about the hostile atmosphere created by Peck.

36. Peck and Ferrante were, and still are, lifelong friends, and upon information and belief, Ferrante was incensed that Plaintiff reported Peck to Internal Affairs.

37. Upon information and belief, Peck was facing termination as a result of the investigation; however, Ferrante stepped in and saved Peck from termination.

38. On or about August 31, 2018, Peck received a 90-day suspension as a result of the investigation.

39. Upon information and belief, for the first time in the history of the Department, the Superior Officers Association voted, and approved, to pay for Peck's benefits during his period of suspension. Plaintiff and the other police officers who were victimized by Peck were never consulted prior to this vote taking place, nor were they present to vote.

40. At the conclusion of his suspension at the end of November 2018, Ferrante returned Peck to the midnight shift where he was responsible to supervise all of the officers he victimized, including Plaintiff, as Peck was his direct supervisor.

41. Shortly thereafter, Plaintiff spoke to Ferrante and requested to be transferred to another shift and away from Peck, and in January 2019, Plaintiff was transferred to another shift.

42. On or about March 22, 2019, Plaintiff, while working an O.E.P. job, was an integral part in apprehending a suspect who had attempted to rape a woman. After the suspect was apprehended, Captain Charles Campbell (“Campbell”), aggressively approached Plaintiff and Lieutenant who was also involved in apprehending the rape suspect. During this interaction, Campbell threw a book at Plaintiff, striking the Plaintiff in the leg as well as the other police officer who was present.

43. Like Peck, Campbell was, and is, another one of Ferrante’s close friends and allies.

44. Plaintiff reported Campbell’s misconduct to a Trustee of the Superior Officer’s Association, and subsequently, an Internal Affairs investigation was commenced in Campbell’s misconduct.

45. Plaintiff was interviewed by members of the Internal Affairs Unit. During his interview, Plaintiff described the encounter where Campbell threw a book at him. In addition, Plaintiff shared other instances of highly inappropriate conduct exhibited by Campbell which created a hostile atmosphere for Plaintiff and others on Plaintiff’s shift.

46. Subsequently, the City took over the Internal Affairs Investigation, again hiring the same law firm to conduct interviews and conduct the investigation.

47. The investigation spanned several weeks as well over fifty (50) HPD police officers were interviewed concerning Campbell.

48. Upon information and belief, a large myriad of the officers interviewed by the law firm spoke about the hostile atmosphere created by Campbell and spoke about their experiences of being harassed and intimidated by Campbell.

49. Upon information and belief, this investigation resulted in the allegations against Campbell being overwhelmingly sustained; however, Campbell was permitted to retire in good standing, without any charges and/or discipline being brought against him, in direct violation of the New Jersey Attorney General Guidelines concerning Internal Affairs Policies and Procedures.

50. Upon information and belief, allegations concerning Ferrante were raised through this investigation, and significant evidence was thereafter presented that Ferrante allowed, was aware of and fostered an utterly horrible and intolerable work atmosphere.

51. As a result of allegations being raised against Ferrante, it was openly spoken about among the Department that Ferrante would assuredly begin to target and retaliate against those who spoke out against he and his close friend, Campbell.

52. In or around October 2018, Plaintiff studied for and took a promotional test administered by the Civil Service Commission to attain the rank of Lieutenant.

53. As a result of the testing process administered by the Civil Service Commission, Plaintiff ranked seventh on the promotional list to become a Lieutenant.

54. In April 2019, the top eight candidates were all called into a meeting by Ferrante, where they were advised that they would all be promoted to Lieutenant before the list expires in 2022.

55. In March 2021, Ferrante called Plaintiff and advised him that he was being transferred back to the midnight shift in anticipation of the upcoming promotions.

56. Again, this decision to assign Plaintiff to midnights was abnormal to say the least, as there were over ten (10) Sergeants which Plaintiff had seniority over who should have been assigned to midnights rather than Plaintiff, and the midnight shift is an undesirable shift.

57. On or about July 1, 2021, Ferrante abruptly retired, and LoBue was named as Acting Chief of the Department. LoBue was, and is, a close friend of Peck.

58. The retirement of Ferrante triggered a round of promotions within the Department.

59. In addition, by the end of July 2021, all six Sergeants ranked ahead of Plaintiff were promoted to Lieutenant in order and without skipping any Sergeants.

60. After these promotions, Plaintiff was ranked first on the Lieutenant's Civil Service promotional list, and his certification was set to expire on May 2, 2022.

61. On or about February 22, 2022, Plaintiff presented for an interview for the open Lieutenant's position where he met with outgoing Acting Chief LoBue, incoming Acting Chief Aguilar, and the City's Business Administrator, Jason Freeman ("Freeman").

62. On February 24, 2022, Plaintiff received a phone call from Freeman wherein Freeman advised Plaintiff that he (Plaintiff) was being skipped for the Number 2 candidate, Jonathan Mecka ("Mecka"), a 14-year member of the Department, as opposed to Plaintiff's 26 years of dedicated service.

63. Plaintiff's experience and qualifications far exceed those of Mecka.

64. Plaintiff did not contemporaneously receive a reason for being bypassed on the Civil Service Lieutenant's list.

65. On February 25, 2022, Plaintiff was served with an Intradepartmental Memorandum from the Office of Internal Affairs. The Memorandum indicated that an internal affairs complaint involving an allegation of Neglect of Duty was made against the Plaintiff, and that Plaintiff may be contacted by an investigator if he was needed for an interview.

66. On March 4, 2022, Mecka was promoted from Sergeant to Lieutenant.

67. The promotion of Mecka over Plaintiff was done in retaliation for Plaintiff blowing the whistle on Departmental practices concerning Peck and Campbell.

68. Indeed, Plaintiff was described by Chief Aguilar in the Personnel Order setting forth Plaintiff's retirement as follows:

“Throughout his career, Nicholas was the recipient of many awards and letters of commendation as a result of outstanding performance...Nicholas' investigative techniques, dedicated and thoroughness as a veteran officer resulted in the apprehension of the final assailant in [a] heinous attack in which the victim suffered permanent, traumatic brain damage...As a patrol supervisor, Nicholas was known for guiding and mentoring younger officers under his supervision to develop their skills with regards to criminal procedure and Title 2C...”

69. On April 26, 2022, Plaintiff was called down to Internal Affairs, where he was advised the Internal Affairs would be conducting a formal interview concerning the allegation of Neglect of Duty.

70. On May 2, 2022, Plaintiff's certification to be promoted to the rank of Lieutenant expired, meaning that he would have to study for and take another test in order to be promoted.

71. On May 3, 2022, Plaintiff was interviewed by Internal Affairs concerning the allegation of Neglect of Duty.

72. On May 17, 2022, Plaintiff received a written reprimand for “Failure to Supervise” concerning a police report from October 13, 2021.

73. Having no more energy, mental, emotional strength to continue to deal with the corrupt police chiefs of the Department, on May 24, 2022, Plaintiff gave notice of his retirement, which was to be effective June 1, 2022.

74. On June 1, 2022, Plaintiff retired as a Sergeant.

75. Normally, the Department conducts a “walk-out” for members on their last day; however, Plaintiff was never given a walk-out, nor was he given a last roll call. In addition, retiring

members of the Department are provided with an American flag and a shadow box for their shields; however, neither were provided to Plaintiff upon his retirement.

76. In addition to the foregoing, the City, through Ferrante, is actively attempting to prevent Plaintiff from receiving tuition reimbursement which he is entitled to under the Superior Officers Association's contract.

77. Plaintiff received his Associates Degree in Criminal Justice and as such, he is entitled to an additional \$2,000 in base pay each year under his Collective Bargaining Agreement.

78. Nonetheless, upon information and belief, at the behest of Kenneth Ferrante, now Public Safety Director for the City, the City is actively attempting to prevent Plaintiff from receiving this reimbursement, and instead, spending thousands of dollars in legal bills above and beyond the amount he owed.

COUNT ONE

VIOLATION OF THE CONSCIENTIOUS EMPLOYEE PROTECTION ACT

79. Plaintiff repeats the allegation set forth in all preceding paragraphs.

80. Defendants' actions against Plaintiff, as aforesated, including but not limited to, Defendants' failure to promote Plaintiff to the rank of Lieutenant, were done in retaliation for Plaintiff's whistle-blowing activities described hereinabove.

81. Plaintiff engaged in whistle-blowing activities in that he disclosed and objected to Defendants' conduct which he reasonably believed was in violation of law and/or public policy, and/or rules or regulations promulgated pursuant to law and/or public policy.

82. Specifically, Plaintiff reasonably believed that the illegal/improper/illegitimate actions and conduct of Peck and Campbell, done in the course of their employment, were practices

done in violation of the New Jersey Constitution and/or laws, rules and regulations promulgated pursuant to law, established codes of conduct and ethics, a clear mandate of public policy, and/or were criminal and unethical.

83. In retaliation for his whistle-blowing activities, Plaintiff suffered adverse employment actions, including but not limited to Defendants' failure to promote Plaintiff to the rank of Lieutenant, and other retaliatory and harassing acts at the hands of Defendants, as outlined above.

84. Plaintiff's whistleblowing activities concerning Peck and Campbell were surely a determinative and/or substantial/motivating factor in the Defendants' decision to retaliate against him through the adverse actions described hereinabove.

85. Defendants' adverse employment actions against Plaintiff were without any legitimate and/or lawful purpose. The purported rationale for Defendants' adverse employment actions were pre-textual and were advanced in order to mask Defendants' retaliatory intent.

86. Defendants' collective harassing and retaliatory actions against Plaintiff constitute violations of CEPA.

87. As a result, Plaintiff's statutory rights have been violated and his protections under the law have been eviscerated.

88. Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and is incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

The Court is advised that, pursuant to Rule 4:25-4, Brian S. Schiller, Esq. is designated as trial counsel for Plaintiff in this action.

LAW OFFICE OF BRIAN SCHILLER LLC
Attorney for Plaintiff, Nicholas Burke

/s/ Brian S. Schiller

By: _____
Brian S. Schiller

Dated: February 22, 2023

RESERVATION OF RIGHTS

Plaintiff reserves the right to file such specific amendments and/or additional claims as are applicable hereinafter to this action and/or as the same are subsequently discovered.

LAW OFFICE OF BRIAN SCHILLER LLC
Attorney for Plaintiff, Nicholas Burke

/s/ Brian S. Schiller

By: _____
Brian S. Schiller

Dated: February 22, 2023

DEMAND FOR PRODUCTION OF INSURANCE AGREEMENTS

Pursuant to Rule 4:10-2(b), demand is hereby made that you disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy all or part of a judgment, which may be entered in the action or to indemnify or reimburse for payment made to satisfy the judgment. If so, attached a copy of each, or in the alternative state, under oath and certification, the (a) policy number; (b) name and address of the insurer; (c) inception and expiration date; (d) names and addresses of all persons insured thereunder; (e) personal injury limits; (f) property damage limits; and (g) medical payment limits.

CERTIFICATION IN ACCORDANCE WITH RULE 4:5-1

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding and no such action or proceeding is contemplated. I know of no other party who should be joined in this action.

LAW OFFICE OF BRIAN SCHILLER LLC
Attorney for Plaintiff, Nicholas Burke

/s/ Brian S. Schiller

By: _____
Brian S. Schiller

Dated: February 22, 2023