

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DAVID M. McGOVERN, individually, and in his :
capacity as President of Local 1703 of the :
International Association of Firefighters, AFL-CIO, :
and LOCAL 1703 OF THE INTERNATIONAL :
ASSOCIATION OF FIREFIGHTERS, AFL-CIO, :
Plaintiffs, :

vs. : C.A. No. 1:24-cv-

WILLIAM S. BAILEY, III, individually, and in :
his capacity as Chief of the Tiverton Fire :
Department, and, the TOWN OF TIVERTON, :
by and through its Treasurer, Denise G. Saurette, :
Defendants. :

COMPLAINT

INTRODUCTORY STATEMENT

1. This action is brought to redress violations of the plaintiff, David M. McGovern’s rights under the United States Constitution. The plaintiff, a Fire Captain with just under (10) years’ experience with the Tiverton Fire Department, claims in this lawsuit that he is being retaliated against for his protected First Amendment activities, asserted under 42 U.S.C., § 1983, as a union member and, more recently, as the Acting President of Local 1703 of the International Association of Firefighters, AFL-CIO. In addition, plaintiff David M. McGovern, brings claims under Rhode Island state law for violations of the Rhode Island Whistleblower’s Act, Rhode Island General Laws, § 28-50-1, *et seq.*, for retaliation based upon his bringing to the attention of the defendants violations of Rhode Island General Laws, federal statutes and Town of Tiverton laws. The rights of Local 1703, the recognized collective bargaining representative of the Tiverton Firefighters, are similarly violated by the actions of the defendants.

JURISDICTION

2. This Honorable Court has jurisdiction over the plaintiff's claims of constitutional violations, as asserted under 42 U.S.C. § 1983, under the provisions of 28 U.S.C. §§ 1331 and 1343, respectively. In this Complaint, the plaintiff asserts violations of Rhode Island State law, specifically, the provisions of Rhode Island General Laws § 28-50-1, *et seq*, "The Rhode Island Whistleblowers' Protection Act". As to the plaintiff's Rhode Island state law claims, which arise out of the same activities as the plaintiff's claims of constitutional violations, the plaintiff invokes this Honorable Court's Supplemental Jurisdiction under 28 U.S.C. § 1367.

PARTIES

3. The plaintiff, David M. McGovern, is employed by the Town of Tiverton as a Captain with the Tiverton Fire Department and is currently serving as the President of Local 1703 of the International Association of Firefighters, AFL-CIO, the recognized bargaining representative for all sworn members of the Tiverton Fire Department with the exception of the Chief and the Deputy Chief.

4. The plaintiff, Local 1703 of the International Association of Firefighters, AFL-CIO ("Local 1703") is the recognized collective bargaining representative for all sworn members of the Tiverton Fire Department, with the exception of the Chief and Deputy Chief.

5. The defendant, William S. Bailey, III ("Bailey") is the Chief of the Tiverton Fire Department and is named in this Complaint individually, and in his capacity as Chief of the Tiverton Fire Department.

6. The Town of Tiverton ("Tiverton") is a municipal corporation organized under a charter and, under the charter, has created the Tiverton Fire Department. The Town of Tiverton

has enacted written policies, ordinances and regulations that govern the operation of the Tiverton Fire Department. In addition, the Town is required to abide by privacy protections of certain provisions of the General Laws of the State of Rhode Island.

FACTUAL ALLEGATIONS

7. For approximately the past fifteen (15) years the Tiverton Fire Department has been afflicted by a catastrophic turnover rate among its sworn members. The high turnover rate is based largely upon the pay for members of the Department, which ranks among the lowest of fire departments in the State of Rhode Island.

8. The combination of the high turnover rate and low pay has, in the opinion of the defendant, Bailey, decimated the staffing of the Tiverton Fire Department.

9. As the recognized collective bargaining representative for members of the Tiverton Fire Department, Local 1703 has attempted to advocate for increases in pay for its members.

10. Low pay and a high turnover rate create a substantial problem with recruiting new members and with the retention of the existing members of the Tiverton Fire Department.

11. Low pay and a high turnover rate has resulted in catastrophically low morale among the membership of Local 1703.

12. During the month of March of 2023, a member of Local 1703 was assaulted by a senior member of Local 1703.

13. The March 2023 assault was brought to the attention of the Fire Chief, Bailey, who performed no investigation and did not discipline the senior member who committed the assault.

14. On or about April 23, 2024, members of the Tiverton filed with the defendant, Bailey, a formal complaint as a result of claims of a hostile work environment.

15. The formal complaint recited the March 23, 2023 assault referenced above and claimed that the defendant, Bailey, had violated the Tiverton Employee Handbook, the State of Rhode Island Violence Prevention in the Workplace policy (Rhode Island General Laws § 28-52-1) and the Occupational Safety and Health Administration (OSHA) regulations on workplace violence.

16. A member of the Tiverton Fire Department applied for a job with another fire department and was offered employment with that fire department.

17. The member notified defendant Bailey of the decision to accept employment with the other fire department.

18. On April 22, 2024, a member of Local 1703 filed a formal report with the defendant, Bailey, and the Town Administrator, Christopher Cotta, complaining of “direct physical, verbal and psychological actions” by a senior member of the Tiverton Fire Department against him and other members of the Tiverton Fire Department.

19. On April 22, 2024, the plaintiff, David McGovern, in his capacity as Acting President of Local 1703, wrote out a formal complaint with defendant Bailey concerning the failure of the Town of Tiverton, to allow a member, who had non-elective surgery scheduled, to use a loosely-administered sick leave bank that had been established by the Town.

20. The Town of Tiverton has historically collected from members donated sums of money that have been deposited, interest-free, in a “sick back” account maintained by the Town.

21. The Town of Tiverton is currently refusing to allow members to utilize the “sick bank” and continues to maintain, interest-free, sums of money in excess of one hundred thousand dollars (\$100,000), which should be paid to current and retired members of Local 1703.

22. Within a short period of time after the member notified defendant Bailey of the decision to accept employment with another fire department, a woman identified as the girlfriend of defendant Bailey, contacted the member by Facebook messaging and began a conversation wherein the girlfriend denigrated and insulted the member for leaving the Tiverton Fire Department.

23. The decision of the member to leave the Tiverton Fire Department and to accept employment with another fire department was a private matter and was not public at the time that the defendant, Bailey’s girlfriend denigrated and insulted the member for leaving the Tiverton Fire Department.

24. The only manner in which the defendant, Bailey’s girlfriend would have known that the member had decided to leave the Tiverton Fire Department and accept employment with another fire department would be that the defendant Bailey disseminated private information to his girlfriend, with the intent to punish the member for leaving the Tiverton Fire Department.

25. As of April 25, 2024, the Executive Board of the plaintiff, Local 1703, had made a decision to ask for a “no confidence” vote among the union’s membership, pertaining to the defendant Bailey.

26. The decision to seek a “no confidence” vote among the membership of Local 1703 is an action and expression of speech that is protected under the First Amendment to the United States Constitution.

27. The decision to seek a “no confidence” vote among the membership of Local 1703 is an action and expression of speech that is protected “concerted activity” that the union membership are allowed to undertake within their rights as the members of a collective bargaining representative.

28. On April 23, 2024, the plaintiff, David McGovern, in his capacity as the Acting President of Local 1703, met with the defendant, Bailey and asked Bailey to resign in light of the Facebook contacts between Bailey’s girlfriend and the Local 1703 member who had informed Bailey of the decision to leave the Tiverton Fire Department to work in another fire department.

29. On April 25, 2024, the plaintiff, David McGovern, elected to attempt to speak to the defendant, Bailey, concerning several incidents that involved members of the Tiverton Fire Department, including the Facebook contacts between Bailey’s girlfriend and the member of Local 1703 who had decided to leave the Tiverton Fire Department for another fire department.

30. The plaintiff, David McGovern, in his capacity as Acting President of Local 1703, traveled to Station 2 of the Tiverton Fire Department and met with Lieutenant Nicholas Barboza, also a member of the Executive Board of the Tiverton Fire Department, with the intention of speaking with the defendant, Bailey, concerning several incidents of concern to members of Local 1703.

31. Defendant Bailey, accompanied by the Tiverton Fire Department Deputy Chief, invited the plaintiff, David M. McGovern, who was present into his capacity as the Acting President of Local 1703, into his office at Station 2 of the Tiverton Fire Department.

32. The plaintiff, David M. McGovern, accompanied by Lt. Nicholas Barboza, entered the

office of defendant Bailey and outlined the concerns of Local 1703, alleging that Bailey had failed to address at least three incidents of harassment, including most recently, the incident involving Bailey's girlfriend's Facebook messages with the member who had informed Bailey of a decision to leave the Tiverton Fire Department for employment with another fire department.

33. The member who was the recipient of denigrating and abusive comments by Bailey's girlfriend over the decision to leave the Tiverton Fire Department for employment with another fire department filed a police report with the Tiverton Police Department concerning the messages.

34. In the meeting with defendant Bailey, plaintiff McGovern, again acting in his capacity as the Acting President of Local 1703, informed Bailey that the membership of Local 1703 would decide on May 6, 2024 about whether to vote "no confidence" in Bailey's leadership and that, in McGovern's opinion, the vote of "no confidence" would pass.

35. During the meeting of April 25, 2024, the plaintiff McGovern, as the Acting President of Local 1703, informed defendant Bailey that if the membership of Local 1703 voted "no confidence" in Bailey's leadership, the outcome of that vote would negatively impact Bailey in the event that he attempted to leave the Tiverton Fire Department for other employment.

36. At the end of the meeting, defendant Bailey indicated that he wanted to apologize to the member who had received the denigrating and abusive Facebook comments from his girlfriend, however the member did not wish to speak to Bailey due to the stress caused by the incident.

37. On May 1, 2024, the defendant, Town of Tiverton's Town Administrator, Christopher Cotta notified the plaintiff, David McGovern that:

“You are hereby suspended with pay effective today, May 1, 2024, for the lesser of 30 days or until such time that you have had an opportunity to be heard at an administrative hearing that I, as Town Administrator, will be holding regarding your recent conduct on both April 23, 2024. It is my intention to remove you from the municipal employment position as a fire captain on the Tiverton Fire Department for, among other things, conduct unbecoming as an officer and the allegations of criminal conduct alleged to have occurred on or about the dates described above. You will be provided with formal written notice containing a clear statement of the grounds for such removal along with a hearing date in accordance with Tiverton Home Rule Charter Article XII, Section 1210 Removal from Office (a) Appointed Town Office or Employee.

Pending such final action, you shall be suspended with pay and relieved of all duties for the Tiverton Fire Department. You are prohibited from accessing the Tiverton Fire Department's and the Town of Tiverton's computer information systems. You are also prohibited from appearing in uniform on behalf of the Tiverton Fire Department and from working any regular or extra duty/detail shifts until further notice.”

(The Notice from Cotta to the plaintiff is attached hereto as Exhibit 1 and is incorporated by reference in this Complaint).

38. On May 16, 2024, the Town of Tiverton, by and through its Town Administrator, Christopher Cotta, informed the plaintiff, David McGovern that the Town would hold a hearing on May 28, 2024, informing the plaintiff “you are being given written notice of my intention to have you removed from your office and position within the Tiverton Fire Department.” (The letter of May 16, 2024 is attached hereto as Exhibit 2 and is Incorporated by reference in this Complaint).

39. The decision of the defendant, Town of Tiverton, through the Town Administrator, Christopher Cotta, to terminate the plaintiff, David McGovern's employment as a Fire Captain

with the Tiverton Fire Department, was based on the plaintiff's free speech, protected under the provisions of the First Amendment to the United States Constitution.

40. The free speech made by the plaintiff, David McGovern, which was made on April 23, and 25, 2024, was made by him in his capacity as the Acting President of Local 1703, and, as such, was protected speech under the First Amendment of the United States Constitution.

41. The decision of the defendant, Town of Tiverton, through the Town Administrator, Christopher Cotta, to terminate the plaintiff, David McGovern's employment as a Fire Captain with the Tiverton Fire Department, was based upon the plaintiff, David McGovern's pursuit of concerted, First Amendment-protected activity as the Acting President of Local 1703.

42. The actions of the Town of Tiverton, through the Town Administrator, Christopher Cotta in terminating the plaintiff, David McGovern's employment as a Fire Captain was made in retaliation for the plaintiff's prior actions in maintaining a social media page in the name of Local 1703.

43. The actions of Local 1703 in maintaining a social media page in its name was the subject of retaliation by the Town of Tiverton, resulting in a lawsuit in this Honorable Court, Civil Action 23-0423M.

44. The filing of Civil Action 23-0423M resulted in a consent judgment between Local 1703 and the Town of Tiverton. (A copy of the consent judgment is attached hereto as Exhibit 2 to this and is hereby incorporated by reference herein.

45. Civil Action 23-0423 was predicated on the protected First Amendment activities of members of Local 1703, including the plaintiff, David McGovern, who, was at the time, a

member of the Executive Board of Local 1703.

46. In the time frame leading up to the filing of Civil Action, 23-0423, the defendant, Town of Tiverton's Town Administrator, Christopher Cotta, suspected that the plaintiff, David McGovern, was involved in the social media pages that led to the filing of that lawsuit.

47. From October of 2023 up until the present time, the Town of Tiverton has maintained a policy of intolerance as to the First Amendment-protected activities of Local 1703 and of its members, including the plaintiff, David M. McGovern.

48. The decision of the defendant, Town of Tiverton to terminate the plaintiff, David McGovern's employment as a Fire Captain with the Tiverton Fire Department, was predicated upon both his free speech on April 23, and 25, 2024, as well as upon his prior free speech that served as the factual basis for the filing of Civil Action 23-0423.

49. As a result of the fact that the plaintiff, David McGovern, reported violations of the Rhode Island Workplace Violence Protection Act, Rhode Island General Laws § 28-52- 1, *et seq.*, his speech and actions are protected under the Rhode Island Whistleblowers' Protection Act, Rhode Island General Laws § 28-50-1, *et seq.*.

50. The actions of the defendants, Bailey and the Town of Tiverton, in punishing and terminating the plaintiff, David McGovern, from his employment as a Fire Captain with the Tiverton Fire Department are intentionally designed to prevent his free speech, in his capacity as the Acting President of Local 1703, in violation of the First Amendment to the United States Constitution.

51. As a result of the fact that the defendant, Town of Tiverton, has decided, prior to conducting a mandated hearing, to terminate the plaintiff, David McGovern from his

employment as a Fire Captain with the Tiverton Fire Department, the plaintiff will likely suffer irreparable harm as his rights under both the First Amendment and his due process rights under the Fourteenth Amendment to the have been violated.

COUNT ONE
42 U.S.C. § 1983

Violation of Free Speech Rights as Union Leader Under First Amendment
Violation of Due Process Rights Under Fourteenth Amendment

52. The plaintiff, hereby incorporates by reference and re-alleges each and every allegation set forth above in paragraphs one through fifty-one in Count One.

53. At all times pertinent hereto, the plaintiff, David McGovern's speech, as outlined herein, and including the statements made on April 23 and 25 to the defendant, Bailey, was made in his capacity as the Acting President of Local 1703, and as a private citizen, and as a result, the statements made to Bailey are protected under the First and Fourteenth Amendments of the United States Constitution.

54. The decision of the defendant, Town of Tiverton, to terminate the plaintiff, David M. McGovern's employment is predicated on the defendant Bailey's complaints of the protected First Amendment statements made to him by the plaintiff on April 23 and 25, 2024.

55. Prior to any decision to terminate the plaintiff, David M. McGovern's employment as a Fire Captain, the defendant, Town of Tiverton, through Town Administrator, Christopher Cotta, was required, under the Fourteenth Amendment to the United States Constitution, to conduct a pre-termination hearing.

56. In this matter, the defendant, Town of Tiverton, decided to terminate the plaintiff, David M. McGovern's employment prior to holding a pre-termination hearing, despite the fact that the Town has scheduled a pretextual hearing on May 28, 2024.

57. From the written notice created by the Town Administrator, Christopher Cotta, on May 1, 2024, it is clear that the decision of the defendant Town to terminate the plaintiff, David McGovern, was made prior to providing the plaintiff with an opportunity to address the allegations.

WHEREFORE, the plaintiff demands judgment against the defendants, jointly and severally, as follows:

1. That the Court issue a temporary restraining order enjoining the defendants from terminating the employment of the plaintiff, David M. McGovern as a Fire Captain with the Tiverton Fire Department.

2. That the Court issue a preliminary injunction enjoining the defendants from terminating the employment of the plaintiff, David M. McGovern, as a Fire Captain with the Tiverton Fire Department.

3. That, after trial, the Court issue a permanent enjoining the defendants from terminating the employment of the plaintiff, David M. McGovern, from his employment as a Fire Captain with the Tiverton Fire Department.

4. That the plaintiffs be awarded such other and further relief as may be deemed appropriate and just, along with attorney's fees and costs.

COUNT TWO
RHODE ISLAND WHISTLEBLOWERS'S ACT

Rhode Island General Laws § 28-50-1, et seq..

56. The plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth above in paragraphs one through fifty-five in Count Two.

57. As a person who reported violations of Rhode Island General Laws, Rhode Island Workplace Violence Protection Act, R.I.G.L. § 28-52- 1, *et seq.*, the plaintiff's speech and actions are protected under the Rhode Island Whistleblowers' Protection Act, Rhode Island General Laws § 28-50-1, *et seq.*.

WHEREFORE, the plaintiff demands judgment as follows:

1. That the Court issue a temporary restraining order enjoining the defendants from terminating the employment of the plaintiff, David M. McGovern, from his employment as a Fire Captain with the Tiverton Fire Department.
2. That the Court issue a preliminary injunction enjoining the defendants from terminating the employment of the plaintiff, David M. McGovern, as a Fire Captain with the Tiverton Fire Department.
3. That, after trial, the Court issue a permanent injunction enjoining the defendants from terminating the employment of the plaintiff, David M. McGovern, as a Fire Captain with the Tiverton Fire Department.
4. That the plaintiffs be awarded such other and further relief as may be deemed appropriate and just, along with attorney's fees and costs.

THE PLAINTIFFS,
By their attorney,

/s/Edward C. Roy, Jr., Esq.
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VERIFICATION

I, David M. McGovern, hereby swear to the truth of the following:

1. I am the acting President of Local 1703 of the International Association of Firefighters, AFL-CIO.
2. I have read the foregoing complaint and everything set forth in this complaint is true and accurate to the best of my knowledge and belief.

David M. McGovern

JURY TRIAL DEMAND

The plaintiff demands a trial by jury as to all causes triable to a jury.

/s/Edward C. Roy, Jr., Esq.

Dated: May 17, 2024

