

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RYAN JOHNSTON

Plaintiff

v.

**NORTH BRADDOCK BOROUGH, THE
NORTH BRADDOCK BOROUGH
POLICE DEPARTMENT, CHIEF ISAAC
DANIELE, AND BOROUGH
COUNCILMEN JOHN VAHOSKY,
MICHAEL DOBRINICH, BRIDGETTE
COBBS, VICKI VARGO, TERESA
PARKER, JEROME SEPESY,
CHRISTOPHER ROLAND, MICHAEL
BREASTON, TINA DIXON, AND MAYOR
TOM WHYEL (IN THEIR OFFICIAL
CAPACITY AND AS INDIVIDUALS),
JOINTLY AND SEVERALLY,**

Defendants

No: 2:19-cv-

COMPLAINT
ELECTRONICALLY FILED

JURY TRIAL DEMANDED

INTRODUCTION

This action arises under the Fourth, and Fourteenth Amendments to the United States Constitution; under federal law, specifically, Title 42 U.S.C. § 1983; and under Pennsylvania law for violations of the PA Whistleblower Act, PA Wiretap Act, and the PA Wage Payment and Collection Law.

While the Defendant(s) were acting within the scope of his/their appointed public office and/or employment, he/they maliciously, intentionally, or with reckless negligence violated the due process rights of the Plaintiff, Fourth Amendment Seizure and expectations of privacy, along with

violations of the PA Whistleblower Act, PA Wiretap Act, and the PA Wage Payment and Collection Law. Defendant Borough and Police Department were acting under the color of state law. The intentional actions of the Defendant(s) caused injury to the Plaintiff without due process of law and violated state law.

JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331, 1343, and 1367 based upon the need for a determination of a federal question involving the Fourth and Fourteenth Amendments to the United States Constitution. Venue is properly set in the United States District Court for the Western District of Pennsylvania pursuant to 28 U.S.C. 1391 based upon the facts that the Plaintiff and all Defendants reside or are located within the bounds of the Western District of Pennsylvania and all relevant transactions, events, and/or occurrences took place in the Western District, Pittsburgh Division, Allegheny County.

PARTIES

1. Plaintiff Ryan Johnston, also referred to as Officer Johnston (“Johnston”), is a citizen of the United States of America, presently residing in Allegheny County, and at all times in question was employed by the Borough of North Braddock as a part-time police officer.
2. Defendant, the North Braddock Borough (“Borough”), is an borough incorporated in 1897 that is located in Allegheny County, with a business mailing address of 600 Anderson Street, N. Braddock, PA 15104.
3. Defendant, Chief Isaac Daniele (“Daniele”), has a business mailing address of 600 Anderson Street, N. Braddock, PA 15104.
4. Defendant, the North Braddock Borough Police Department (“Department”), is an municipal

police department located in Allegheny County, was incorporated in 1897, with a business mailing address of 600 Anderson Street, N. Braddock, PA 15104.

5. Defendants, John Vahosky, Michael Dobrinich, Bridgette Cobbs, Vicki Vargo, Teresa Parker, Jerome Sepesy, Christopher Roland, Michael Breaston, Tina Dixon, and Tom Whyel, are elected Borough councilmen and Borough mayor, respectively, (“Council”) all presently residing in North Braddock Borough, Allegheny County, with a business address of 600 Anderson Street, N. Braddock, PA 15104.

BACKGROUND FACTS

6. Plaintiff is a thirty (30) year old American Citizen and accredited municipal police officer with three (3) years of police experience in the Commonwealth of Pennsylvania..

7. In addition to graduating from the police academy, Plaintiff has two (2) college degrees in criminal justice, and has completed a masters degree in Intelligence and Global Security, and over five hundred (500) hours of additional law enforcement related training.

8. Plaintiff has had a spotless record within the community.

9. Plaintiff’s prior and current employers (excepting the Defendant) can testify to Plaintiffs strong positive work ethic and good reputation within the community.

10. Plaintiff was hired as a North Braddock Borough police officer in October 2018.

11. The Department chief was Dean Bazzone (“Bazzone”), who was on medical leave at the time.

12. Defendant Daniele was the acting chief under Borough Council’s orders at the time of Plaintiff’s hire.

Plaintiff had a Property Interest as an Employee with Defendant Borough and Department

13. Plaintiff was hired by vote of the Borough Council as a temporary part-time patrolman required to work a minimum of thirty-two (32) hours a week.

14. Plaintiff was a member of the Borough's police department as defined in the Borough Code.. 2012 Pa. ALS 43, 2012 Pa. Laws 43, 2011 Pa. HB 1702, 2012 Pa. ALS 43, 2012 Pa. Laws 43, 2011 Pa. HB 1702; 8 Pa.C.S. § 106.

15. Plaintiff was never informed by the Borough or Department that he was hired under a contingent probationary period.

16. Plaintiff often worked overtime, averaging twenty-four (24) hours of overtime per pay week, and at the time of his suspension had worked a total of one thousand four hundred (1,400) hours for the Department.

17. Plaintiff was never given a copy of the Department's Standard Operating Guidelines ("SOG"), nor the Fraternal Order of Police Lodge #91 ("FOP") Union Collective Bargaining Agreement ("CBA"), but in April 2019 found parts of the SOG and the CBA in the station and copied them for his personal files. (Plaintiff's Exhibit 1 and 2)

18. Plaintiff was never reprimanded, suspended, nor had a negative written report as a Department police officer prior to his unlawful termination.

19. After three (3) months of being employed by the Department, Plaintiff was given a raise.

20. After three (3) months being employed by the Department, Plaintiff's union dues to the FOP were automatically subtracted and from his paycheck, and as such he was covered under the CBA with the Borough and Department.

21. Based upon his employment, Plaintiff was entitled to due process rights, as well as the

benefits of just cause provisions set out under the Borough Code, and the CBA.

22. Per the CBA, *Article IV*, the management, direction and control of the Department is subject to the provisions of the CBA and the Borough Code.

23. Per the CBA, *Article V, Section 5*, during an employee's probationary period, the officer shall have no seniority rights but shall otherwise enjoy and be bound by all the provisions of this Agreement.

24. Per the CBA, *Article VI, Section 1(d)*, to be under the provisions of the CBA, officers are required to work at least 32 hours a week.

25. Per the CBA, *Article VI, Section 4*, officers will be reimbursed for attending court as witnesses.

26. Per the CBA, *Article VI, Section 5*, officers who are certified for firearms training will be compensated for instructing other officers.

27. Per the CBA, *Article VIII, Section 4*, officers shall be paid time and one-half (1 ½) for all hours worked in excess of eight (8) hours per work day and in excess of forty (40) hours during any work week. "There shall be no voluntary services performed without compensation."

28. Per the CBA, *Article XV, paragraph A.*, when an anonymous complaint is made against a police officer and no corroborative evidence is obtained, the complaint may be classified as unfounded.

29. Per the CBA, *Article XV, paragraph G.*, unless agreed to by the parties, neither the police officer or the Borough shall make public comments on the reason for any disciplinary action against any police officer.

30. Per the CBA, *Article XVIII, Section 1*, "The employer shall not discharge nor suspend any

employee without just cause.”In all cases involving the discharge or suspension of an employee, the Employer must immediately notify the employee in writing of his discharge or suspension and the reason therefore.

31. Per the CBA, *Article XVIII, Section 2*, “except as to serious offences and/or criminal activities, in respect to discharge or suspension, the Employer must give at least one (1) warning notice of the specific complaint against such employee in writing.

32. Per the Borough Code: No person employed in any police or fire force of any borough may be suspended without pay, removed or reduced in rank except for the following reasons:

- (1) Physical or mental disability affecting the person's ability to continue in service, in which case the person shall receive an honorable discharge from service.
- (2) Neglect or violation of any official duty.
- (3) Violation of any law if the violation constitutes a misdemeanor or felony.
- (4) Inefficiency, neglect, intemperance, immorality, disobedience of orders or conduct unbecoming of an officer.
- (5) Intoxication while on duty.
- (6) Engaging or participating in the conduct of a political or election campaign while on duty or in uniform or while using borough property otherwise than to exercise the person's own right of suffrage.
- (7) Engaging or participating in the conduct of a political or election campaign for an incompatible office as provided in section 1104(f) (relating to appointments and incompatible offices)... 8 Pa.C.S. §106

33. Per Section 1170 of the Borough Code, a “Police Force” is defined as follows:

“Police force.”—A police force organized and operating as prescribed by law, the members of which devote their normal working hours to police duty or duty in connection with the bureau, agencies and services connected with police protection work and who are paid a stated salary or compensation for the work by the borough. As used in this subchapter, the term shall not include any of the following:

- (1) Special police appointed by the mayor to act in emergencies.
- (2) A person appointed solely for parking meter enforcement duties.
- (3) Special school police.
- (4) Extra police serving from time to time or on an hourly or daily basis.
- (5) An auxiliary policeman appointed under the act of January 14, 1952 (1951 P.L. 2016, No. 561), entitled “An act providing for supplementing the police forces of cities, boroughs, towns and townships, for the appointment, powers and control of

auxiliary police therein, and for the transfer during disasters and emergencies of such auxiliary police, members of the regular police forces, and police equipment thereof.”

8 Pa.C.S. § 1170

34. Per Section 1186 of the Borough Code, if employed during a probationary period, , ***a police officer may be dismissed only for cause*** as specified under §1183: (*emphasis added*)

(a) General rule. — An original appointment to a position in the police force or as a paid fire apparatus operator shall be for a probationary period of not less than six months and not more than one year, but during the probationary period an appointee may be dismissed only for a cause specified in §1183 (relating to rejection of applicant and hearing) or because of incapacity for duty due to the use of alcohol or drugs.

(b) Notice denying permanent appointment.

(1) If, at the close of a probationary period, the conduct or fitness of the probationer has not been satisfactory to the council, the probationer shall be notified in writing that the probationer will not receive a permanent appointment and the appointment shall cease.

(2) If the probationer is not notified or dismissed in accordance with this section, the probationer’s retention shall be equivalent to a permanent appointment

8 Pa.C.S. § 1186.

35. Per Section 1183 of the Borough Code, if employed during a probationary period, , ***a police officer may be dismissed only for cause*** as specified below:

(a) General rule. The commission may refuse to examine or, if examined, may refuse to certify after examination as eligible any applicant who:

(1) is found to lack any of the minimum qualifications for examination prescribed in the rules and regulations adopted for the position or employment for which the applicant has applied;

(2) is physically unfit for the performance of the duties of the position to which the applicant seeks employment;

(3) is illegally using a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802);

(4) has been guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct;

(5) has been dismissed from public service for delinquency or misconduct of office;

or

(6) is affiliated with any group whose policies or activities are subversive to the form of government enumerated in the Constitutions and laws of the United States and this Commonwealth.

8 Pa.C.S. § 1183

36. Under the Defendant Borough Police Department SOG, *Statement of Guideline Methods to Enforce the Law*, “... the officers of this Department have no choice whatever as to what laws they will enforce, when, where, nor against whom. They are obligated by their oath of office to take appropriate action whenever there is a clear-cut violation of the law.”

Missing Evidence and Other Irregularities

37. After the first month or two of being employed as a police officer by the Department, Plaintiff was advised several times by other officers that evidence easily “goes missing” and/or is stolen, and to CYA (“cover you’re a**”).

38. After receiving this warning, Plaintiff was especially conscientious in the documenting and accounting for the chain of custody of evidence, especially any money and/or drugs seized from an arrest.

39. In January 2019, a co-worker showed Plaintiff a video of Daniele stealing evidence, and at that time was informed by the co-worker that there was an official investigation regarding the video by an outside law enforcement agency.

40. Almost every other officer in the Department had concerns that evidence was being tampered with by Daniele.

41. On April 4th, 2019, Plaintiff was interviewed by two (2) Federal Bureau of Investigation (“FBI”) agents, who questioned Plaintiff about the Department’s evidence procedures, and informed Plaintiff that he would be used as an investigation witness going forward.

42. Plaintiff was fully alerted that his suspicions regarding Department evidence irregularities were correct.

43. On May 1, 2019, Plaintiff, with Officer Joe Lynn (“Lynn”), made an arrest in which 3.6 pounds of marijuana was seized.

44. The seized marijuana was in numerous vacuum sealed packages, and due to the number and size of all the packages, all the seized marijuana could not fit into a standard department evidence bag to be sealed.

45. All of the seized marijuana packages were dropped into the evidence closet via the drop box door.

46. This submission was not the Plaintiff’s standard procedure in submitting evidence, but because of the lack of any other method of submitting the packages this was the best he could do under the circumstances.

47. This left the evidence “unsecured” and capable of being easily tampered with, which prompted Plaintiff to notify Daniele of Plaintiff’s concern.

48. At some unknown time after the dropping the marijuana packages into the evidence closet, Daniele moved the marijuana evidence packages into the back evidence storage room located near the rear entrance to the police station.

49. After repeated requests for the lab results from the assistant district attorney (“ADA”) assigned to the marijuana packages case, Plaintiff taped the ADA’s third formal written request (received via fax) on the wall next to Daniele’s mailbox.

50. On April 26, 2019, Plaintiff, who was working night shift at that time, requested that Officer Sha’Ron Jackson (“Jackson”), who worked daylight with Daniele, notify Daniele that the ADA was requesting the lab results on the marijuana packages case.

51. Jackson said he would notify Daniele of the ADA’s request.

52. On April 28, 2019, Plaintiff telephoned Daniele and again repeated the ADA's request for the lab results, whereupon, Daniele informed Plaintiff that Jackson had submitted the packages to the lab on April 25th, 2019.

53. Jackson never mentioned to Plaintiff that he submitted any of the packages to the lab for testing.

54. On April 29, 2019, while the Plaintiff was in the station, Daniele asked the Plaintiff to show him how to use a vacuum sealer, (the vacuum sealer was in the station because it was evidence from another case.)

55. Plaintiff showed Daniele how to use the vacuum sealer to seal bags/packages.

56. On April 30, 2019, while at Magisterial District Judge Schricker's office, Plaintiff and Lynn spoke with ADA Sarah Weikart ("Weikart"), whereupon, ADA Weikart informed Plaintiff and Lynn that the marijuana sealed packages were never submitted to the crime lab.

57. Later that day, ADA Weikart informed Plaintiff that another law enforcement agency was investigating Daniele and that she would forward to that agency Plaintiff's information on Daniele

Whistleblowing

58. Plaintiff, as required by law, had immediately reported to the District Attorney's Office all of the abovementioned information regarding Daniele's failure to submit the evidence and the intentional hindering an active prosecution.

59. Plaintiff also contacted one of the FBI agents that had previously interviewed Plaintiff and reported the same information regarding Daniele and the handling of the evidence in the above-referenced case.

60. From that date on (April 30, 2019), Plaintiff continued reporting to ADA Weikart, Deputy

District Attorney (“DDA”) Christopher Avetta (“Avetta”), and the FBI regarding any irregularities with evidence under Daniele’s control.

61. Prior to this time, Plaintiff had arrested Officer Jackson’s cousin, and had seized \$8,700.00 cash and six (6) ounces of marijuana, whereupon Plaintiff placed the cash in the station’s wall safe, and the marijuana in the evidence closet.

62. Subsequently, Plaintiff witnessed Daniele removing the \$8,700.00 from the wall safe, and Daniele said to Plaintiff that he had placed the money in Daniele/Bazzone’s (the Department Chief’s) office.

63. At a later date, using the playback feature on the station’s CCTV system, another officer watched Daniele remove the money from the wall safe and take the money into the chief’s office.

64. The same officer informed Plaintiff that only Daniele entered the Department Chief’s office after that date, never Bazzone.

65. Sometime in March 2019, Daniele removed/disabled the playback and camera control function on the station’s CCTV system, so that the officers could not watch and monitor Daniele’s actions as they had in the past. “

66. In preparing for the prosecution of the case, ADA Cassandra Barch (“Barch”) had been asking for the \$8,700.00 money evidence, but Daniele said he could not access the money because it was locked in a safe in the Department Chief’s office and only Bazzone had access to the safe, and that Bazzone had difficulty in walking because of a recent surgery.

67. ADA Barch subpoenaed Daniele to bring the \$8,700.00 money evidence to court on May 10th, 2019.

68. Daniele failed to appear in court on that date specified in the subpoena (May 10th, 2019),

allegedly due to a death in the family.

69. On the same day as the scheduled court hearing and family funeral, Daniele came to the station, at which time Daniele told the Plaintiff that he (Plaintiff) needed to take the marijuana evidence to court, which evidence was located in the Department Chief's office, but Daniele nor Plaintiff could not access the \$8,700.00 money evidence because it was allegedly locked in a safe in the Department Chief's office.

70. Plaintiff asked Daniele for more non-traffic citations; Daniele said to follow him to the Department Chief's office.

71. Daniele had to unlock two doors to enter the Department Chief's office, and while standing in the office doorway, Plaintiff pointed to a black standing safe in the office and asked Daniele if that was the safe that contained the \$8,700.00 money evidence; Daniele said, "yes."

72. Daniele retrieved the marijuana evidence in the Department Chief's office and instructed Plaintiff to take it to court, which Plaintiff promptly did.

73. The ADA had to postponed Officer Jackson's cousin's case until the end of June 2019 because the \$8,700.00 money evidence was missing.

74. On May 21st, 2019, Plaintiff, determined to evaluate Daniele's complicity in the missing evidence by planning to observe Daniele's reaction to a generic comment concerning illegal activity within the Borough police department, by mentioning to Daniele that the FBI came to Plaintiff's house and questioned him.

75. Daniele immediately and earnestly focused on who the agent was; what did he look like; and extensively and pointedly interrogated Plaintiff as to what were the exact questions asked, and what were Plaintiff's answers.

76. Daniele's specific reaction, questions, and responses to Plaintiff's generic comment concerning just a question of illegal activity convinced Plaintiff that Daniele had violated the laws of the Commonwealth regarding the evidence held in the station in the instant case, and Plaintiff therefore was obligated to take appropriate action whenever there is a clear-cut violation of the law.

77. Plaintiff again communicated this activity to the District Attorney's Office.

Retaliation by Defendant(s) and Illegal Wiretap

78. During the night shift on May 31st, 2019, when Plaintiff and Lynn return to the station from their normal night patrol, they noticed a new lock on the evidence locker and other new security devices, and that Daniele had .restored camera control function to the CCTV system, but not the playback function.

79. Lynn observed and informed Plaintiff that a shroud had been install on the inside of the door of the station's evidence locker's drop box

80. While the Plaintiff was inspecting the shroud with Lynn, an audible alarm was heard coming from inside the evidence closet.

81. With Lynn present, Plaintiff activated his cell phone's video function, extended his arm through the drop box door, and recorded a video of the inside of the evidence closet.

82. When the cell phone video was reviewed by Lynn and Plaintiff, it was clear that a *Ring*™ doorbell camera had been installed in the closet and both officers believed that the alarm came from the doorbell camera.

83. Plaintiff's actions taking in the cell phone video was in furtherance of his investigation/documentation of evidence storage and safekeeping within the station.

84. After the installation of the shroud inside the closet, no one could reach or tamper with any

evidence due to the height of the drop box door.

85. Both Plaintiff and Lynn expressed their approval of the installation of the shroud and the doorbell camera.

86. When relieved by the next shift, Plaintiff and Lynn informed Sgt. Brian Hodges (“Hodges”) of the *Ring*™ doorbell camera.

87. Plaintiff also expressed his concern that the *Ring*™ doorbell camera may record conversations illegally because one feature of the *Ring*™ doorbell camera is that the video and audio action can be remotely activated and recorded.

88. Hodges previously aware of Daniele’s unlawful actions, said he would inform the mayor.

89. On June 3rd, 2019, Officer Gabrielle Smith (“Smith”) and Plaintiff were informed that Daniele had reported to the Allegheny County Emergency Services PCO, (the county dispatchers), that Daniele was going to discipline Smith, Office Eli Shomo, and “another officer” for “putting their hand in the cookie jar.”

90. On the same day at shift change, Office Larry Butler (“Butler”) told Smith that Butler was not suppose to know of an investigation started by Daniele, but she should be warned of the existence of the investigation.

91. On June 4th, 2019, Plaintiff received a telephone call from ADA Weikart, in which Weikart informed Plaintiff that she had been to Magistrate Schricker’s office where she was informed that Daniele was accusing the Plaintiff of committing the crime of evidence tampering, and had shown several office personnel, including the magistrate, pictures/video of the “tampering.”

92. Weikart also informed Plaintiff that Daniele had used this baseless allegation of the Plaintiff’s tampering with evidence as the excuse for Daniele’s negligence and multiple failures to

submit evidence in a number of criminal cases.

93. The magistrate's staff also told Weikart that Daniele had made it clear at that time that he was terminating Plaintiff's and Smith's employment at North Braddock Borough Police Department.

94. Later that day, Butler texted Plaintiff to contact Daniele.

95. At 1728 hours (5:28 pm) Plaintiff called and spoke for six (6) minutes with Danielle, at which time was informed that, "per council," Plaintiff was removed from the duty schedule effective immediately.

96. When asked for a reason for the removal, Daniele stated that the Borough Council has video from inside the evidence closet of Plaintiff "messing with the evidence, " and that Plaintiff had covered up surveillance cameras inside the station.

97. Daniele stated that the Borough Council had the camera installed inside the evidence locker, and that they get notifications from the camera when it is activated.

98. Daniele then asked that Plaintiff come in to the station to talk "just between them" the following day.

99. Plaintiff told Daniele that this meeting sounded disciplinary and requested union representation.

100. Daniele contacted the FOP union rep, James ("Traz") Matrazzo, and told Plaintiff to talk to Traz first and not to come in the next day.

101. Traz spoke with Plaintiff, and subsequently filed a formal grievance with the Defendants for their violation of the CBA.

102. Plaintiff spoke with ADA Weikart on June 13th, 2019, who informed him that Plaintiff was not facing any criminal charges nor was he under investigation by the District Attorney's Office.

Unlawful Termination

103. On the day of the scheduled Borough Council meeting (June 18th, 2019) Plaintiff went to the Borough building to speak with Council President John Vahosky (“Vahosky”), at which time Vahosky told Plaintiff that Council had never voted on suspending Plaintiff.

104. Plaintiff questioned Vahosky as to exactly what was Plaintiff being accused of, with Vahosky replying that he is not exactly sure.

105. Plaintiff formally requested directly to Vahosky that he be given an opportunity to see what evidence there was and that he be given a hearing on the matter, and that he be permitted to address the Council in private. Vahosky acknowledged the request.

106. At the appointed time for the scheduled Borough Council meeting, Plaintiff, Traz, and Lynn were present. During the public meeting, the Council suspended the meeting and went into executive session to discuss personnel matters, promptly made everyone leave and closed the meeting room doors.

107. While the three were waiting outside of the meeting room and without alerting and re-admitting the public, the Council reopened the public meeting. The meeting doors remained closed to the public.

108. Plaintiff, Traz, and Lynn only became aware that the public meeting was over when the councilmen began leaving the meeting room.

109. Traz inquired about the status of Plaintiff’s employment with the Borough, which the reply was that they will mail something.

110. Plaintiff received his employment termination letter from the Borough on June 21st, 2019.

111. Within ten (10) days, (July 1st, 2019), as required by the CBA, Plaintiff sent an email to the

Borough Manager, Doug Marquireit (“Marquireit”), appealing the Borough Council’s decision.

112. On July 3rd, 2019, the Borough solicitor mailed a letter to Plaintiff a letter stating that Plaintiff did not have a right to a “grievance” hearing.

113. On the same day, Plaintiff emailed Marquireit repeating and clarifying that he was not requesting a “grievance” hearing but a due process appeal hearing. Marquireit never responded to the appeal hearing request.

**Plaintiff’s Unlawful Termination was a Deprivation of Property
and Liberty Without Due Process**

114. Defendants have ignored Plaintiff’s numerous attempts that they provide him with the reasons for his termination.

115. Plaintiff has exhausted or attempted to exhaust all remedies that should have been available to him prior to taking this action.

116. Defendants have disseminated a false and defamatory impression that Plaintiff did something wrong or criminal and as a result Plaintiff was terminated from his job a police officer with the Department.

117. Defendants’ actions have damaged Plaintiff’s good name, reputation, honor, and others’ view of his integrity.

118. Defendants’ actions have affected Plaintiff’s mental and physical health.

119. Defendants’ actions have seriously damaged his standing with his peers and potential future employers.

120. Plaintiff did not commit a crime nor violate Department policy.

121. Plaintiff had a liberty interest in his status as a police officer.

122. Plaintiff has a property interest in his employment with the Department.

123. Plaintiff has not been paid for wages and over time earned, unpaid court time, and firearm's instructor certification fees after being terminated by the Defendants.

COUNT 1
Violation of Due Process Clause Title 42 U.S.C. §1983
Straight Due Process and Stigma Plus
Plaintiff v. All Defendants

124. All prior paragraphs are hereby incorporated herein by reference as if the same were more fully set forth at length herein.

125. North Braddock Borough and North Braddock Borough Police Department as a governmental unit acted under color of state law.

126. Daniele, as an employee of North Braddock Borough and North Braddock Borough Police Department, acted under color of state law.

127. Plaintiff has and had a right under the United States Constitution to be afforded due process of law before the Defendants deprived him of his rights as an employee by terminating him from his position as a police officer.

128. At all relevant times, North Braddock Borough and North Braddock Borough Police Department acted through its servants, agents, associates, and employees, including but limited to, Daniele.

129. At all relevant times, North Braddock Borough and North Braddock Borough Police Department acting through its servants, agents, associates, and employees, including but limited to, Daniele, were aware that employees, and specifically Plaintiff, were governed by the CBA, the Borough Code, and the Department SOG.

130. At all relevant times, North Braddock Borough and North Braddock Borough Police Department acting through its servants, agents, associates, and employees, including but limited to, Daniele, were aware that the CBA, the Borough Code, and the Department SOG established certain procedures governing the terms of employment for police officers such as Plaintiff, terms which could not be waived, changed, or ignored as established by the PA Legislature and the drafters of and the CBA.

131. It is noteworthy that the Plaintiff had no previous discipline prior to his termination, and the termination occurred soon after Plaintiff had raised his concerns of the illegal wiretap, and after Daniele was alerted to the FBI questioning the Plaintiff, after .

132. In particular, the CBA and the Borough Code makes it very clear, and specifically guarantees the Plaintiff certain procedural rights, since Plaintiff was a member of the Department police force and was never given any reason for his termination.

133. The Borough Code and the CBA both provide a “just cause” provision before employment can be terminated.

134. All Defendants violated relevant provisions of the Borough Code and the CBA in terminating Plaintiff’s employment with the Department.

135. Upon information and belief, Defendants selectively, secretly, and capriciously unjustly terminated the Plaintiff’s employment with the Department.

136. As a result of the Defendants’ conduct, Plaintiff has been terminated in violation of his due process rights and has jeopardized his career as a police officer.

137. Plaintiff’s termination was a deprivation of property and a deprivation of liberty without due process.

138. Plaintiff's termination has and will result in a loss of earnings and benefits, and economic suffering to his family.

139. Because of Plaintiff's unlawful termination he is automatically ineligible to qualify for higher paying law enforcement positions.

140. Plaintiff's termination has caused him substantial mental anguish, pain, emotional and physical suffering, humiliation, and loss of reputation.

141. All the above-described injuries and damages caused to Plaintiff were directly, legally, proximately, and substantially caused by the actions of all Defendants.

142. All the Defendants knew or should have known that their conduct violated Plaintiff's due process rights.

143. The acts of Daniele, maliciously, intentionally, or with reckless negligence violating the due process rights of the Plaintiff, were of the kind and nature that are preventable if the employer selected and retained properly trained and competent employees.

144. The acts of Daniele, maliciously, intentionally, or with reckless negligence violating the due process rights of the Plaintiff, were of the kind and nature that are preventable if the employer formulated, adopted, and enforced adequate rules and policies to ensure the acts of properly trained and competent employees.

145. Defendants North Braddock Borough and North Braddock Borough Police Department are responsible for the actions of its employees.

146. The Plaintiff was unlawfully terminated and his due process rights were denied as outlined in the holdings found in *George V. Moore*, 394, Pa 419, 147 A,2d 148; *See also, Deforte v. Borough of Worthington*, 212 A.3d 1018, 2019 Pa LEXIS 3851, 2019 WL 3216545 (2019).

147. A constitutionally protected “property interest arises where the contract itself includes a provision that the state entity can terminate the contract only for cause.” *Unger v. National Residents Matching Program*, 928 F.2d 1392, 1399 (3rd Cir. 1991)

148. In summary, the CBA guaranteed that the Borough could not terminate the Plaintiff without “just cause.”

149. The Defendants’ conduct was recklessly indifferent to Plaintiff’s Constitutional rights and therefore warrants imposition of punitive damages, in an amount to be determined at time of trial.

WHEREFORE, Plaintiff respectfully request judgement for:

- a. Equitable relief reinstating Plaintiff with full back and front pay and benefits;
- b. Compensatory damages for non-economic damages;
- c. Attorney fees, costs, and expenses;
- d. Punitive damages, and,
- e. Other such relief as this court deems appropriate.

COUNT II

**VIOLATION OF 4TH AMENDMENT AND 14TH AMENDMENT
CONSPIRACY TO VIOLATE THE 4TH AMENDMENT AND 14TH AMENDMENT
42 U.S.C § 1983 - UNLAWFUL SEARCH AND SEIZURE
and
VIOLATION OF PA WIRETAPPING AND ELECTRONIC SURVEILLANCE
CONTROL ACT (“PA WIRETAP ACT”) 18 PA.C.S.A. §§5071-5728
Plaintiff v. All Defendants**

150. All prior paragraphs are hereby incorporated herein by reference as if the same were more fully set forth at length herein.

151. The Fourth Amendment clearly states that “The right of the people to be secure in their

persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

152. The Pennsylvania Constitutional essential states the same fundamental and individual protections for its citizens. Pa. Const. Art. 1, §8.

153. Upon substantial information and belief, the Defendants recorded Plaintiff’s private conversation with another officer.

154. Plaintiff had a valid expectation that his conversation would not be intercepted and recorded.

155. Based upon the time of day, location, surroundings, and circumstances, Plaintiff’s expectation of privacy was justifiable.

156. Defendants successfully intercepted and unlawfully disseminated Plaintiff’s private conversation.

157. The illegal recording was the product of wilful misconduct and intentionally made to maliciously harm the Plaintiff.

158. Plaintiff’s conversation is believed to have been recorded by the *Ring*™ Doorbell camera installed by the Defendants inside the Department’s evidence closet.

159. At the time of the recording, no one else was in police station except the Plaintiff and another officer.

160. The station doors and windows were secured and if anyone did enter the station, the Plaintiff would immediately have known of the presence of any other people.

161. Plaintiff was never notified of any listening or recording devices in the building, nor was the Ring Doorbell recording device visible.

162. Plaintiff never consented to the video or audio recording of his conversation.

163. The Courts have defined the violation of the PA Wiretap Act in the interception of an oral communication as follows:

[A] claimant must demonstrate that: (1) he engaged in a communication; (2) he possessed an expectation that the communication would not be intercepted; (3) his expectation was justifiable under the circumstances; and (4) the other party attempted to, or successfully intercepted the conversation, or encouraged another to do so.

Kelly v. Borough of Carlisle, 622 F.3d 248, 257 (3d Cir. 2010) (citing *Agnew v. Dupler*, 553 Pa. 33, 717 A.2d 519, 522(Pa. 1998)).

164. Plaintiff was told by another officer that they heard and saw the unlawful recording of his voice and hand that was or had been publically shown by Daniele to numerous other individuals.

165. Upon substantial information and belief, the individual Borough Council had the *Ring*™ Doorbell installed, and the individual Borough Council Defendants watched the video and listened to the recording of Plaintiff's private conversation at the June 18th, 2019 Council meeting.

166. The recording is believed to be one factor resulting in the Defendants' decision to unlawfully terminate Plaintiff's employment.

167. Upon information and belief, the video and the recording of Plaintiff's conversation could only be made through an illegal recording in violation of the PA Wiretap Act, 18 Pa.C.S.A. §5701, *et. seq.*

168. The crime to illegally record in violation of the PA Wiretap Act is a felony of the third degree.

169. All individual Defendants, based upon their surreptitiously installing the *Ring*™ Doorbell, and subsequently illegally recording the Plaintiff's private conversation, have violated the PA Wiretap Act. Per §5726 of the Act, the Defendants can be removed from office or employment:

(a) Cause of action. — Any aggrieved person shall have the right to bring an action in Commonwealth Court against any investigative or law enforcement officer, public official or public employee seeking the officer's, official's or employee's removal from office or employment on the grounds that the officer, official or employee has intentionally violated the provisions of this chapter. If the court shall conclude that such officer, official or employee has in fact intentionally violated the provisions of this chapter, the court shall order the dismissal or removal from office of said officer, official or employee.

18 Pa.C.S. § 5726

170. The acts of Daniele, maliciously, intentionally, or with reckless negligence violating the due process rights of the Plaintiff, Fourth Amendment Seizure, along with the violation of the PA Wiretap Act against the Plaintiff was of the kind and nature that are preventable if the employer selected and retained properly trained and competent employees.

171. The acts of Daniele, maliciously, intentionally, or with reckless negligence violating the due process rights of the Plaintiff, Fourth Amendment Seizure along with the violation of the PA Wiretap Act against the Plaintiff was of the kind and nature that are preventable if the employer formulated, adopted, and enforced adequate rules and policies to ensure the acts of properly trained and competent employees.

172. Defendants North Braddock Borough and North Braddock Borough Police Department are responsible for the actions of its employees.

173. As a direct and proximate result of this unlawful and wilfully malicious violation of the PA Wiretap Act, the Plaintiff has suffered emotional pain and mental anguish, together with serious economic hardship, including lost wages, and other special damages, in an amount to be determined at time of trial.

WHEREFORE, Plaintiff respectfully requests judgment for:

- a.) Equitable relief;
- b.) Compensation for non-economic damages;

- c.) Attorney fees, costs, and expenses;
- d.) Punitive damages be attached to all individual Defendants; and,
- e.) Other such relief as this court deems appropriate.

COUNT III

**Violation of Pa Whistleblower Act and
Wrongful Termination in Violation of Public Policy
43 P.S. §1423(a)
Plaintiff v. All Defendants**

174. All prior paragraphs are hereby incorporated herein by reference as if the same were more fully set forth at length herein.”

175. Plaintiff had reported Daniele’s criminal activity to the District Attorney’s office and to FBI agents.

176. Plaintiff had also made a good faith report to the Sgt. Hodges of the illegal wiretap.

177. Daniele became aware that Plaintiff was questioned and had spoken to the FBI about missing evidence, and that Plaintiff also raise the issue of the illegal wiretap.

178. Daniele sought to remove from the Department any individuals who would supply information of Daniele’s criminal tampering and theft of evidence to law enforcement personnel.

179. Using the unlawfully recorded audio and video of the Plaintiff, Daniele maliciously fabricated an accusation of criminal activity on the part of the Plaintiff, incriminating Plaintiff and blaming Plaintiff for Daniele’s numerous failures to timely produce evidence to the courts.

180. The Defendants also used Plaintiff’s notification of the illegal wiretap as a basis for his termination.

181. The Defendants unlawfully terminated Plaintiff in writing by correspondence date June 19th, 2019, and received by Plaintiff on June 21st, 2019.

182. Daniele was the main instigator of Plaintiff's termination, motivated in retaliation of Plaintiff reporting Daniele's criminal actions.

183. The Borough, Department, and all individual Defendants intentionally, or through reckless incompetence, joined in with Daniele in retaliating against Plaintiff's honoring his oath of office to take appropriate action whenever there is a clear-cut violation of the law

184. Plaintiff was terminated by making a lawful report(s) of an instance or pattern of wrongdoing to the appropriate law enforcement authorities

185. The Pa Whistleblower Law is intended to enhance openness in government and compel government's compliance with the law by protecting those who inform authorities of wrongdoing; the law is intended to protect employees from adverse employment action when making a lawful and good faith report regarding instances of wrongdoing or illegal activity.

186. The acts of Daniele, maliciously, intentionally, or with reckless negligence violating the PA Whistleblower Act against the Plaintiff the Plaintiff was of the kind and nature that are preventable if the employer selected and retained properly trained and competent employees.

187. The acts of Daniele, maliciously, intentionally, or with reckless negligence violating the PA Whistleblower Act against the Plaintiff was of the kind and nature that are preventable if the employer formulated, adopted, and enforced adequate rules and policies to ensure the acts of properly trained and competent employees.

188. Defendants North Braddock Borough and North Braddock Borough Police Department are responsible for the actions of its employees.

189. As a direct and proximate result of this unlawful and wilfully malicious violation of the PA Whistleblower Act, the Plaintiff has suffered emotional pain and mental anguish, together with serious economic hardship, including lost wages, and other special damages, in an amount to be determined at time of trial.

WHEREFORE, Plaintiff respectfully requests judgment for:

- a.) Equitable relief;
- b.) Compensation for non-economic damages;
- c.) Attorney fees, costs, and expenses;
- d.) Punitive damages be attached to all individual Defendants; and,
- e.) Other such relief as this court deems appropriate.

COUNT IV

**Violation of Pa Wage Payment and Collection Law (“WPCL”)
43 P.S. §260.1, *et. seq.*
Plaintiff v. All Defendants**

190. All prior paragraphs are hereby incorporated herein by reference as if the same were more fully set forth at length herein.”

191. After the unlawful termination, Plaintiff was never paid for hours work prior to termination, in addition to court time, and reimbursement of firearm instructor certification fees as required under CBA.

192. After the unlawful termination, Plaintiff was entitled to be paid for hours work prior to

termination, in addition to court time, and reimbursement of firearm instructor certification fees.

193. Plaintiff calculates the wages and over time, plus fees due is approximately \$5,000.00.

194. Plaintiff request the payment in writing numerous times, with the Defendants refusing to pay.

195. Plaintiff's claims are made pursuant to 43 P.S. §260.1, *et. seq.*

196. Pursuant to 43 P.S. §260.9(a)©, Plaintiff is entitled to receive a penalty equal to ten (10) percent to the amounts due from Defendants.

197. Pursuant to 43 P.S. §260.9.(a)(f), Plaintiff is entitled to receive reasonable attorney fees for successfully bring the action against Defendants.

198. Pursuant to 43 P.S. §260.10, Plaintiff is entitled to receive a penalty equal to twenty-five (25) percent of the amounts due from Defendants.

199. The acts of the Defendants of maliciously, intentionally, or with reckless negligence violating provisions of the WPCL were of the kind and nature that are preventable if the employer selected and retained properly trained and competent employees.

200. The acts of the Defendants maliciously, intentionally, or with reckless negligence violating provisions of the WPCL were of the kind and nature that are preventable if the employer formulated, adopted, and enforced adequate rules and policies to ensure the acts of properly trained and competent employees.

201. Defendants North Braddock Borough and North Braddock Borough Police Department are responsible for the actions of its employees.

WHEREFORE, Plaintiff respectfully request judgement for:

- a. All wages, over time hours, and fees, owed to Plaintiff, plus penalties;
- b. \$6,000.00 in attorney fees, plus costs, and expenses; and,

- c. Other such relief as this court deems equitable, just and appropriate under the circumstances.

JURY TRIAL DEMANDED

Respectfully Submitted,

s/ Lawrence E. Bolind, Jr.
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