

STATE OF MINNESOTA
COUNTY OF CROW WING

DISTRICT COURT
NINTH JUDICIAL DISTRICT

CASE TYPE: OTHER

Firefighters Union Local 4725 and
Mark Turner, Its President,

Court File No. _____
Judge: _____

Plaintiffs,

COMPLAINT

vs.

City of Brainerd,

Defendant.

Plaintiffs Firefighters Local 4725 (“Local 4725”) and Mark Turner, Its President (“Turner”), for their Complaint against Defendant City of Brainerd (“City”) state and allege as follows:

PARTIES

1. Plaintiff Local 4725 is a labor organization consisting of individuals who have been employed on a full time permanent basis as paid members of the fire department of the City of Brainerd.

2. Plaintiff Turner is an individual who was, at all material times, employed as a member of the full-time, permanent, paid fire department of the City of Brainerd and served as President of Local 4725. He brings this action, individually, and in his capacity as President of Local 4725, and on behalf of its members.

3. Defendant City is a municipal corporation located in Crow Wing County and employs members of Local 4725.

4. The Court has jurisdiction over Defendant City and the subject matter jurisdiction of this litigation.

5. Venue is proper in this court under Minn. Stat. §542.09 because the acts complained of occurred in whole or in part in Crow Wing County and Defendant City is located in Crow Wing County under Minn. Stat. § 542.09.

COUNT I: UNFAIR LABOR PRATICE

6. Plaintiffs reallege and incorporate the above allegations as if fully set forth herein and further state and allege as follows.

7. The City is authorized to create a “paid” fire department, pursuant to Section V, §67 of the City Charter.

8. The City also has a Police and Fire Civil Service Commission whose rules provide that the Department shall consist of a fire chief and “full time department personnel,” along with volunteer firefighters.

9. Under the aforesaid provisions, the City has created a “paid” fire department consisting of “full time department personnel,” as contemplated by the City Charter and Civil Service Commission rules, respectively, comprised of members of Local 4725, consisting of five full time paid firefighters, including Plaintiff Turner and four others.

10. In 2010, the City sought to eliminate the full time, paid fire department.

11. Plaintiff Turner and other members of Local 4725 spoke out publicly, to the media, and at meetings of the City Council, opposing the elimination of the full time, paid fire department, and also made public statements regarding management deficiencies within the fire department and City administration.

12. The City did not eliminate the full time fire department in 2010. But, on September 21, 2015, the City passed a Resolution, Number 45:15, eliminating the “paid department” and all “full time department personnel,” which was implemented beginning on or about October 21, 2015, and continuously since that date.

13. The aforesaid action by the City resulted in the lay-off of all members of Local 4725, including Turner, and its members were replaced by volunteer, temporary firefighters who are not members of Local 4725.

14. The City and Local 4725 are subject to the Minnesota Public Employees Labor Relations Act (PELRA), Minn. Stat. § 179A.01, *et seq.*

15. The Civil Service rules require that, in the event of layoffs, temporary employees are to be laid off before “permanent employees,” such as members of Local 4725, including Turner, who all worked as a permanent employee.

16. The City has replaced members of Local 4725 by assigning volunteer, on-call temporary fire fighters to perform the duties and functions previously performed by the paid, full time department personnel, who are members of Local 4725 and were laid off as a result of the aforesaid Resolution.

17. Assigning the duties and functions that were formerly performed by paid, full time department personnel, who are members of Local 4725, to volunteer on call firefighters constitutes a violation of the Civil Service Rules, which require that part time individuals be laid off before full time individuals, as well as a provision in the Collective Bargaining Agreement between Local 4725 and the City, which provides for the recall of any employees who are laid off by the City if jobs are available within a 2-year time period from the time of their lay off.

18. The City has had an opening for the position of Fire Marshall/Deputy Chief.

19. The requirement for that position included two years of supervisory experience in a fire department.

20. In early January, 2016, the City appointed to the position of Fire Marshall/Deputy Chief, an individual who had been a volunteer, on call, part time firefighter and does not have two years of fire supervisory experience, which violates the requirement set forth in the job description for the position of Fire Marshall/Deputy Chief.

21. The aforesaid conduct of eliminating the “paid” full-time, permanent fire department and all of its personnel; laying off permanent personnel and replacing them with part time, on-call fire fighters; appointing one of the volunteer “on call” fire fighters to the position of Fire Marshall/Deputy Chief despite lacking two-year supervisory experience required by the City; all constitute actions that interfere, restrain, or coerce employees in the exercise of rights guaranteed to them under PELRA; dominate and interfere with the formation, existence, or administration of an employee organization; and discrimination with regard to hiring or tenure; to discourage membership in an employee organization.

22. The aforesaid conduct by Defendant City constitutes unfair labor practices in violation of Minn. Stat. § 179A.13, subd. 2(1)(2) and (3).

23. The aforesaid conduct by City is continuing in nature and is causing irreparable harm to Plaintiffs.

24. As a result of the above, Plaintiffs have suffered damages, including loss of income and benefits, in a reasonable amount in excess of \$50,000.

25. By reason of the foregoing, Plaintiffs are entitled to an Order enjoining and restraining the City from eliminating its full time paid fire department, ordering that Plaintiffs be

reinstated to their jobs, and awarding to Plaintiffs damages in a reasonable amount in excess of \$50,000.

COUNT II: VIOLATION OF CITY CHARTER

26. Plaintiffs reallege and incorporate the above allegations as if fully set forth herein and further state and allege as follows.

27. As set forth above, the City Charter provides for the City to have a “paid department,” and the rules of the Civil Service Commission require that there be “full time department personnel.”

28. The aforesaid Resolution 45:15, which eliminates the paid, permanent fire department was an attempt to amend the City Charter and Civil Service Commission rules.

29. Minn. Stat. § 410.12 requires that a City Charter be amended through a specific process and not by a resolution passed by the City Council.

30. The aforesaid action by the City Council in enacting Resolution 45:15 is an improper attempt to amend the City Charter and its requirement to have a “paid department” consisting of full time personnel.

31. The aforesaid conduct by the City, including passage of Resolution 45:15, eliminating the paid full time fire department is invalid, null and void.

32. As a result of the above, Plaintiffs have suffered damages, including loss of income and benefits, in a reasonable amount in excess of \$50,000.

33. By reason of the foregoing, Plaintiff is entitled to an Order enjoining and restraining the City from eliminating its paid full time fire department, directing that Plaintiffs be reinstated to their jobs and awarding to Plaintiffs its damages in a reasonable amount in excess of \$50,000.

**COUNT III: VIOLATION OF THE FIRST AMENDMENT
OF THE U.S. CONSTITUTION**

34. Plaintiffs reallege and incorporate the above allegations as if fully set forth herein and further state and allege as follows.

35. As set forth above, Plaintiffs have made statements of public importance or concern regarding efforts to eliminate of the full time paid fire department and alleged mismanagement by fire department management and the city administration.

36. The aforesaid statements were not knowingly false or made with reckless disregard for the truth.

37. The aforesaid conduct did not cause disruptions or undermine the authority of supervisory personnel.

38. The aforesaid conduct was not part of the official duties of members of Local 4725, including Plaintiff Turner, and was done in their capacity as citizens.

39. The aforesaid conduct by City in eliminating the paid, full time fire department was done because of the statements made by Plaintiffs.

40. The aforesaid conduct by the City constitutes retaliation against Plaintiffs because they spoke out on these issues of public importance or concern.

41. The aforesaid conduct by the City was done under color of state law.

42. The aforesaid conduct by Defendant City constitutes a violation of the rights of freedom of expression of Plaintiffs under the First Amendment of the U.S. Constitution.

43. The aforesaid conduct by Defendant City constitutes a violation of the Federal and Civil Rights Act of 1964, as amended, because it deprived Plaintiffs of their rights and privileges under the U.S. Constitution.

44. The aforesaid conduct by Defendant City is continuing in nature and is continuing in nature and is causing irreparable harm to Plaintiffs.

45. As a result of the above, Plaintiffs have suffered damages, including loss of income, in a reasonable amount in excess of \$50,000.

46. By reason of the foregoing, Plaintiffs are entitled to an Order enjoining and restraining the City from eliminating the paid full time fire department, directing that Plaintiffs be reinstated to their jobs, and awarding to Plaintiffs their damages in a reasonable amount in excess of \$50,000, together with their reasonable attorney's fees and costs incurred herein.

**COUNT IV: VIOLATION OF ARTICLE I, § 3 OF THE MINNESOTA
STATE CONSTITUTION**

47. Plaintiffs reallege and incorporate the above allegations as if fully set forth herein and further state and allege as follows.

48. Article I, § 3 of the Minnesota State Constitution, guarantees to the citizens of the State of Minnesota the right to freedom of speech and expression.

49. The aforesaid conduct by Defendant City in eliminating the paid, full time fire department in retaliation for Plaintiffs speaking out on issues of public importance or concern constitute a violation of their rights of freedom of expression under Article I, § 3 of the Minnesota State Constitution.

50. The aforesaid conduct by Defendant City is continuing in nature and is causing irreparable harm to Plaintiffs.

51. As a result of the above, Plaintiffs have suffered damages, including loss of income, in a reasonable amount in excess of \$50,000.

52. By reason of the foregoing, Plaintiffs are entitled to an Order enjoining and restraining Defendant City from eliminating the paid full time fire department, directing that

Plaintiffs be reinstated to their jobs, and awarding to Plaintiffs damages in a reasonable amount in excess of \$50,000.

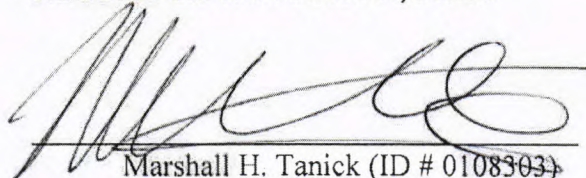
WHEREFORE, Plaintiffs Local 4725 and Mark Turner request the following relief against Defendant City of Brainerd as follows:

1. Enjoining and restraining Defendant City from eliminating the paid, full time permanent fire department and directing that Plaintiffs be reinstated to their jobs.
2. Awarding to Plaintiffs damages in a reasonable amount in excess of \$50,000.
3. Awarding pre-judgment and post judgment interest to Plaintiffs.
4. Granting leave to Plaintiffs to amend their Complaint to include a claim for punitive damages.
5. Awarding to Plaintiffs their reasonable attorney's fees, costs and disbursements incurred herein.
6. Such other and further relief as may be deemed just and equitable.

HELLMUTH & JOHNSON, PLLC

Dated: January 18, 2016

By:



Marshall H. Tanick (ID # 0108303)
8050 West 78th Street
Edina, Minnesota 55439
Telephone: (952) 941-4005
Facsimile: (952) 941-2337

**ATTORNEYS FOR PLAINTIFFS
FIREFIGHTERS UNION LOCAL 4725 AND
MARK TURNER, ITS PRESIDENT**