

THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MARION

DONALD M. NEWELL, an individual,

Plaintiff,

v.

MARION COUNTY, a governmental entity **and**
JAN FRITZ, in her capacity as deputy County
Administrative Officer.

Defendants.

Case No. 20CV14926

COMPLAINT

**(Wrongful Discharge, Due Process
42 U.S.C. § 1983)**

**CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION**

Prayer Demand: \$337,210.00

Comes now the Plaintiff, by and through his attorney, Whitford Law Offices LLC, and
states and alleges as follows:

1.

At all times material herein, Plaintiff was employed by Marion County Public Works
Department ("Department") as its Operations Division Manager, at its location in Salem,
Marion County, Oregon.

2.

At all times material herein, the Defendant, Marion County was a county government
agency, and Jan Fritz, was an individual, employed by Marion County, working in her capacity
as Deputy County Administrative Officer.

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3.

The Circuit Court of Oregon has personal jurisdiction over Defendant, Marion County because it is a public entity operating in and created under the laws of Oregon, and has personal jurisdiction over Defendant, Jan Fritz because of her capacity as Deputy County Administrative Officer, for Marion County, as well as a resident of the State of Oregon.

4.

The Circuit Court of Oregon also has personal jurisdiction over Defendants, because they are engaged in substantial and not isolated activities within this state, because the events set forth in this complaint occurred in Oregon and because the claims arise out of activities actually performed by the Defendants within Oregon.

5.

Plaintiff was a public employee and was not contracted to work for any specific period of time. Employment with Marion County is subject to published policies and workrules.

6.

As a public employee, Plaintiff had a constitutional property interest in his continued public employment and certain due process rights.

7.

As a public employee, Plaintiff had a constitutional liberty interest in maintaining his good name and reputation.

8.

On or about August 15, 2018, Plaintiff was one of five panelists who interviewed and scored applicants for a newly-created Road Supervisor position. The panelists also scored the applicants' applications and their respective responses to a practical test.

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9.

One of the interviewees, Jamie Namitz (“Namitz”), was a Department employee who worked as a Medium Equipment Operator. The Road Supervisor position was two levels above her position; she had not worked in the intermediate position of Crew Leader, the entry level supervisory position for Department.

10.

During her interview, Namitz conceded that she was probably not qualified for the position due to her lack of experience as a Crew Leader, but explained her application as a reflection of her belief that the Department again needed a woman in a supervisory position. Namitz and Plaintiff had had several informal discussions about gender equity issues prior to the interview.

11.

After she had answered the interview questions posed to each applicant, Namitz asked about her weaknesses and strengths as an applicant. Referencing her lack of experience in the intermediate role of Crew Leader, Plaintiff observed that she might not yet be respected as a Road Supervisor. Intending to identify her advocacy for gender equity as a strength, Plaintiff attempted to say that Namitz had been a champion for her gender or sex, but he became tongue-tied and instead said she had been “a champion for her sexuality.”

12.

When the interview procedure was completed, the panel tabulated their results and entered the data into the electronic system used by Marion County’s Human Resources Department (“HR”) to review the hiring process. Applicant information and scores were then submitted to Public Works Director Alan Haley (“Haley”) for final decision and authorization

1 to extend an offer. The selection process was not completed until Haley authorized an offer.
2 In prior such instances he had authorized offers to either an applicant scored highest by the
3 panel or to another applicant with a lower panel score.

4 13.

5 The August, 2018 hiring process concluded when Haley directed that an offer be
6 extended to the applicant scored highest by the panel, who happened to be a male who had
7 worked as a Crew Leader. The offeree accepted the position of Road Supervisor.

8 14.

9 Namitz, who had not been rated among the top three applicants by the panel, filed a
10 complaint with HR alleging that her application had been rejected due to her gender and
11 objecting to the inadvertent use of the word “sexuality” following her formal interview, despite
12 acknowledging that such use had merely been unintentional verbal gaffe by Plaintiff.

13 15.

14 HR conducted an investigation of the complaint. Plaintiff participated in investigatory
15 meetings in late August and in mid-September of 2018. Marion County did not provide a
16 written notice of specific actions alleged to constitute improper conduct or possible violations
17 of policy or workrules, potential sanctions under consideration and an opportunity to respond
18 to such allegations before a final decision was made.

19 16.

20 On or about Tuesday, September 25, 2018, Plaintiff received a disciplinary notice,
21 signed on behalf of Haley. The notice included the conclusion that unspecified conduct had
22 been contrary to four Marion County policies, imposed a five-day suspension without pay,
23 removed Plaintiff from the hiring process, outlined mandatory training, and implemented bi-
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1 weekly compliance monitoring meetings with management for a period of up to twelve
2 months.

3 17.

4 The next day, September 26, 2018, a union representative submitted a written
5 complaint, referencing Namitz and objecting to the County's administration and enforcement
6 of policies addressing "inappropriate behavior of a sexual/discrimination."
7

8 18.

9 Plaintiff began serving his five-day suspension, without pay, on Monday, October 1.

10 19.

11 On October 2, Jan Fritz, Deputy County Administrative Officer ("Fritz") met with
12 Namitz regarding the complaint submitted by the union representative. The complaint had been
13 characterized as an "administrative grievance," pursuant to Article 11(6) of the Marion County
14 Personnel Rules and immediately advanced to Fritz at the third step of the process. The rule
15 provides that Fritz reviews administrative grievances and that her decision "will be final."
16

17 20.

18 The "administrative grievance" was called an "appeal" by Namitz of the disciplinary
19 action imposed on Plaintiff the week before. This characterization was contrary to the language
20 and purpose of the administrative leave policy. Additionally, although treated as an "appeal"
21 of Plaintiff's discipline, Marion County provided him with a timely notice of the supposed
22 grievance.
23

24 21.

25 On October 3, Namitz testified during a public meeting of the Marion County Board
26 of Commissioners. During her testimony, she referred to Plaintiff's verbal gaffe at the end of

1 her August interview and disclosed confidential details of the HR's investigation, conclusions
2 and recommendations. She asserted that HR had recommended discharge and complained
3 that Marion County had disregarded such a recommendation. After Namitz objected to the
4 fact that Plaintiff had not been fired, Commissioner Carlson announced, "the process is
5 moving forward to get a different resolution." When this public hearing took place, Plaintiff
6 remained unaware of any conclusions HR may have drawn from its investigation or any
7 recommendations it may have provided to Marion County. Plaintiff was also unaware that his
8 confidential personnel information had been improperly disclosed to unauthorized individuals or
9 that an administrative grievance "appealing" the disciplinary actions taken against him was
10 pending.
11

12 22.

13 Plaintiff became aware of HR conclusions and recommendations the following day,
14 when an article in the Salem Statesman Journal quoted the union agent representing Namitz
15 and reported additional confidential personnel information, including the conclusion in his
16 suspension letter that unspecified conduct had violated four Marion County policies or
17 workrules.
18

19 23.

20 On Friday, October 5, the final day of his unpaid suspension, Plaintiff received a
21 telephone call informing him that he had been placed on paid administrative leave, as of the
22 following Monday, October 8.
23

24 24.

25 On Monday, October 8, 2018, a brief letter, from Fritz, was hand-delivered to
26 Plaintiff. In the letter Fritz summarized the actions taken against him and noted that she had
"received an appeal of this discipline," on October 2, and was reviewing the sufficiency of the

1 discipline. She directed him to report for an investigatory meeting on October 10 to provide
2 information to “aid me in my review.”

3 25.

4 Plaintiff reported, as directed, on the afternoon of Wednesday, October 10. Following
5 a brief discussion, during which Plaintiff readily admitted his slip of the tongue on August 15,
6 and expressly denied the general conclusory statements in his disciplinary notice and in the
7 letter from Fritz. At the end of the meeting Fritz announced that she expected to complete her
8 review by Friday, October 12.
9

10 26.

11 Plaintiff also received a letter from Fritz, dated October 10, formalizing his period of
12 paid administrative leave through October 12.
13

14 27.

15 On the October 11, the morning following Plaintiff’s afternoon meeting with Fritz, he
16 received a telephone call asking him to come back in to meet with her again. When he
17 arrived, he was handed a termination notice, his final check and summarily discharged.
18

19 28.

20 The termination notice included the conclusory language indicating unspecified
21 conduct had violated four Marion County policies or workrules. Marion County did not
22 provide, and the certified personnel record provided by the County did not include a written
23 notice of specific alleged conduct considered sufficient to warrant a change in the previously
24 imposed discipline or identification of the new action being considered. Marion County also
25 failed to provide Plaintiff with an opportunity to address any such allegations after the review
26 was completed, but before a final decision was made. The process was further procedurally

1 defective in that a member of the Board of Commissioners made a public announcement that
2 “the process is moving forward to get a different resolution” when Namitz objected to the fact that
3 Plaintiff had not been terminated, as a result of her complaint, and before Fritz had completed her
4 review.

5 29.

6 Plaintiff was prevented from securing employment, following his discharge by Marion
7 County due to conclusory characterizations of policy violations with respect to which he had
8 been denied an opportunity to address any specific allegations prior to discharge, and which
9 were disclosed publicly, due to Marion County’s failure to protect the confidentiality of
10 personnel actions taken against him and denial of any opportunity to clear his name, following
11 such improper disclosure.
12

13 30.

14 Plaintiff was also denied a post-discharge opportunity to challenge the unspecified basis
15 for his discharge in that the Namitz “appeal” of his discipline was characterized as an
16 administrative grievance, pursuant to Article 11(6) of the personnel rules. Such rules expressly
17 provide that the step three decision by Fritz “will be final.”
18

19 As a twelve-year management employee, with an excellent work record, Plaintiff was
20 stunned by the termination of his employment by the County. Later, when he encountered
21 media reports of confidential information about details of the Human Resources investigation
22 and purported recommendations of termination, he began to understand what had transpired.
23 The apparently inevitable outcome of the “review” became disturbingly clear when he learned
24 that while serving his unpaid suspension, a full week before he was interviewed by Jan Fritz,
25 a Commissioner had announced in a public meeting that “the process is moving forward to get
26 a different resolution.” The outcome of any review by Fritz was predetermined.

31.

At the time of his discharge, Plaintiff planned to conclude his career with the Department. He was engaged in formal succession planning and intended to work through at least 2020

CLAIMS FOR RELIEF

(Wrongful Termination, Equal Protection, Due Process)

32.

Plaintiff re-alleges all paragraphs above as though fully alleged herein.

33.

Plaintiff is entitled to remedies for wrongful discharge due to violations of Plaintiff's due process and equal protection rights by Defendants Jan Fritz and the Marion County, under the Fourteenth Amendment of the United States Constitution, and enforced through 42 U.S.C. § 1983, as well as Art. I, Sec. 20 of the Oregon Constitution. Plaintiff is entitled to receive compensation he would have received through the date of his planned retirement, in the amount of \$337,210.00, for salary at the time of discharge, supplemented by actual and anticipated increases in an amount to be determined at trial, and lost contributions to his retirement account, in an amount to be determined at trial.

34.

Defendant violated the due process and equal rights protections guaranteed under the Fourteenth Amendment of the United States Constitution, and enforced through 42 U.S.C. § 1983, as well as Art. I, Sec. 20 of the Oregon Constitution, when the county allowed or caused the improper disclosure of Plaintiff's personnel information, to his detriment when

1 such information was made public, without providing an opportunity to address the
2 information or clear his name.


3 35.

4 Because Defendants failed to adhere to Marion County, Oregon, Personnel Rules,
5 Article 9, Sec. 4(A) and (B), in violation of Plaintiff's due process rights as they are
6 guaranteed to him under the Fourteenth Amendment of the United States Constitution, and
7 enforced through 42 U.S.C. § 1983, as well as Art. I, Sec. 20 of the Oregon Constitution.
8 Plaintiff is entitled to remedies guaranteed to him by law.
9

10 **WHEREFORE**, Plaintiff demands judgement from Defendant, as follows:

- 11 1. Plaintiff asks for compensatory damages for lost salary, from the date of discharge
12 through his planned retirement at the end of 2021, in the amount of \$337,210.00, supplemented
13 by actual and anticipated increases during this period, as well as the contributions reimbursing
14 corresponding loss of value in his retirement account, in an amount to be determined;
15
16 2. Plaintiff asks for reasonable attorney's fees pursuant to ORS 20.075 and ORCP 68;
17 3. Plaintiff asks for prevailing party fees pursuant to ORS 20.077;
18 4. Plaintiff asks for punitive damages in an amount to be awarded by a jury; and
19 5. Such other relief as the Court may deem just and equitable.
20

21 DATED: April 7, 2020.

22 

23
24 **Trent T. Whitford, OSB 833460**
25 **Trent@TheEmployeradvocate.com**
26 **Attorney for Plaintiff**