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	:	
	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: BERGEN COUNTY
JOSEPH RIZZA,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	DOCKET NO.: BER-L-8825-13
vs.	:	
	:	
BOROUGH OF DUMONT, BOROUGH OF	:	
DUMONT POLICE DEPARTMENT,	:	
& THE COUNCIL FOR THE	:	
BOROUGH OF DUMONT AND,	:	
ITS MEMBERS, <i>in their</i>	:	
<i>official capacity only, &</i>	:	
THE MAYOR OF DUMONT, <i>in his</i>	:	
<i>Official capacity only,</i>	:	SECOND AMENDED COMPLAINT
JOSEPH L. FAULBORN, <i>in his</i>	:	
<i>individual capacity and his</i>	:	
<i>official capacity as Chief of</i>	:	
<i>Police,</i>	:	
	:	
Defendants.	:	

Plaintiff JOSEPH RIZZA ("Plaintiff"), by and through his attorneys, the Law Offices of Sciarra & Catrambone, L.L.C., as and for a Complaint for claims under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq. upon information and belief, alleges as follows:

PRELIMINARY STATEMENT

1. This is an action brought by Plaintiff against Defendants Borough of Dumont, the Borough of Dumont Police Department and the Mayor and Council for the Borough of Dumont in their official capacities. This action is also brought against Joseph L. Faulborn individually and in his official capacity as Chief of Police for the Borough of Dumont.
2. Plaintiff also seeks judgment of this Court against Defendants under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq.

PARTIES

3. Plaintiff is a Sworn Law Enforcement Sergeant employed by Defendants as a Police Sergeant for the Police Department ("the Department"), where he is currently assigned to the Patrol Division.
4. The Borough of Dumont ("the Borough") is a municipality and a political sub-division of the State of New Jersey.
5. The Borough Council and its Members and the Mayor of the Borough of Dumont constitute the governing body for the Borough. The Mayor and the Council members are named herein in their official capacity only.

6. Chief Faulborn is named herein in his individual capacity and in his official capacity as Chief of Police for the Borough of Dumont.
7. The Borough Council is comprised of six (6) duly elected Council Members and the duly-elected Mayor.
8. Chief Faulborn is the Chief of Police in Dumont and was involved in the promotional process.
9. The Borough of Dumont is formed under the "Borough" form of municipal government pursuant to N.J.S.A. 40A:60-1, et seq.

JURISDICTION

10. Jurisdiction is properly laid in this Court in that Defendants are subject to personal jurisdiction in the State of New Jersey, the events giving rise to the Complaint occurred within the County of Bergen, and Defendants are public bodies and employers located in the County of Bergen.

STATEMENT OF FACTS

11. Plaintiff has been employed as a Police Officer with the Department for 27 years.
12. During his tenure with the Department, he has performed his duties in a competent and efficient manner.
13. Plaintiff has been a Police Sergeant for approximately 10 years.
14. Plaintiff is a resident of the Borough of Dumont.

15. John Centrello is not a resident of the Borough of Dumont.
16. During the entirety of his approximately 27 year career with Defendants, Plaintiff has had no major disciplinary action sustained against him. He has only been counseled on three (3) occasion in 27 years.
17. The Borough's promotional process for the Police Department includes the following: seniority, oral evaluation, education and existing chief's recommendation. A total score for each candidate is compiled by way of assigning a score for the oral evaluation, chief's recommendation, seniority, education.
18. On June 27, 2013, Chief Faulborn announced a promotional opportunity for the rank of sergeant, lieutenant, and captain.
19. The process included the oral interview on September 24 and 25, 2013.
20. On or about October 3, 2013, a list of officers was placed on a promotional list for the rank of Lieutenant, which included Plaintiff and other individuals on that list: Sgt. Francis Gagliardi, Sgt. Vincent Tamburro, Ptm. John Centrello, and Plaintiff.
21. On that list, the individuals were ranked as follows: (1) Gagliardi; (2) Tamburro; (3) Centerllo; and (4) Plaintiff Rizza.

22. Additionally, the Borough Council voted to promote Centrello to the rank of Lieutenant effective October 3, 2013.
23. On October 3, 2013, the Police Chief informed Plaintiff he would not be promoted. There was no substantive discussion in the letter regarding Defendants' decision to promote Patrolman Centrello over Sgt. Rizza.
24. On or about October 9, 2013, Plaintiff met with Chief Faulborn and in order to inquire into the promotional process and the manner in which the Council chose to promote Centrello. Faulborn indicated that the candidates on the promotional list were presented to Mayor and Council based upon "rank order" from the interview. Faulborn recommended Centrello for promotion, and the Council voted to promote Centrello based upon that recommendation.
25. Plaintiff is the grievance officer for the Policeman's Benevolent Association, and was tasked with bringing grievances against management for violations of the collective bargaining agreement.
26. Plaintiff has been an active participant in the Policeman's Benevolent Association Local 377.
27. Plaintiff has been involved with the Police Promotional Committee, Contract Committee, Twelve (12) hour shift

Change Committee and is currently the Chairman of the Grievance Committee.

28. As Chairman of the PBA Grievance Committee, Plaintiff is responsible for filing and prosecuting grievances against the Defendants.
29. Plaintiff has file numerous grievances on behalf of the PBA over the past 7 years.
30. In 2011, the Defendants announced promotions in the police department.
31. A new promotional procedure was approved by the Defendants eliminating the written examination.
32. The PBA raised a concern, through Plaintiff's position as a grievance officer, of having the Chief present for the interview with mayor and counsel in March of 2011.
33. The Chief told Plaintiff, after a PBA meeting in March of 2011 that promotions were not going to be made because of Plaintiff.
34. The Chief stated he felt backstabbed by the Plaintiff for discussing the PBA's concern over having the Chief present during the interview process with Mayor and Council.
35. The Chief and then-Captain Faulborn both blamed Plaintiff for the promotions being cancelled in 2011 to other officers and PBA officials.

36. After being denied promotion in 2013, Plaintiff spoke to the Defendants about why he was denied promotion.
37. The Chief told Plaintiff he was not promoted because he was "antagonistic" over the past ten years. The Chief was referring to the Plaintiff's work as a Union official.
38. Plaintiff also applied for a promotion to the rank of Captain. He was told that he ranked fourth (4th) out of four (4) applicants.
39. The promotional process executed by Defendants is arbitrary, unreasonable and/or capricious, in that it takes into account improper criteria, penalized Plaintiff for legitimate union activity, and fails to consider relevant criteria.
40. Specifically, consideration of the education level obtained by the candidates is inherently biased towards older, more senior officers who at the time of their hire, were not required by Defendants to obtain a 4-year college degree.
41. Additionally, Defendants' promotional process is inherently flawed as it has resulted in a Patrolman with no supervisory experience leapfrogging a Sergeant with over 10 years of supervisory experience.
42. Additionally, Plaintiff possesses police and law enforcement-related training and certifications superior to that of other promotional candidates for the rank of

Lieutenant. Defendants failed to take that training and those certifications into account in the subject promotional process.

43. In a certification dated February 10, 2014, Chief Faulborn certified that he had a conversation with Plaintiff where Plaintiff asked Faulborn to explain why he had not recommended Rizza for promotion. Faulborn certified that he "explained to [Rizza] that the reason [Rizza] had not been promoted was that for the last ten years, since [Faulborn] was a Captain, that [Rizza] challenged the prior police department administration, including Captain Coughlin and Chief Venezia."

44. Chief Faulborn also certified that he stated to Rizza that Rizza "had spent much of that time 'busting people's [chops]'".

45. In conclusion, Chief Faulborn certified, "[f]or the foregoing reasons, I believed that [Rizza] lacked the supervisory talent necessary for further promotion within the department."

46. Defendants' actions against Plaintiff violate the NJCRA as they were done with retaliatory/discriminatory intent and as a result of Plaintiff engaging in protected union activities.

COUNT ONE

(Violation of the NJCRA,
N.J.S.A. 10:6-1 et seq.)

47. Plaintiff reassert and reallege each and every previous paragraph as if fully set forth and reiterated herein.
48. Defendants' actions are in violation of the New Jersey Civil Rights Act ("NJCRA") under N.J.S.A. 10:6-1 et seq.
49. Defendants' collective actions as enumerated above violate Plaintiff's rights to freedom of speech, freedom of association, freedom of assembly, procedural due process and/or substantive due process. Defendants are thus in violation of the New Jersey State Constitution of 1947, including Article I, (1), (5), (6), (18), and (19).
50. Defendants have deprived Plaintiff of rights, privileges and/or immunities secured by the New Jersey State Constitution. Through Defendants' illegal acts, Plaintiff's exercise and/or enjoyment of these rights, privileges or immunities have been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law.
51. The foregoing actions were taken pursuant to an official and extant policy and practice of Defendants, and were taken by individuals with final policymaking authority over such actions.

52. The foregoing violations of law were overseen by agents, officials, employees and/or other individuals acting on Defendants' behalf, who ratified such violations by Defendants' actions, which were retaliatory and violations of law, and being in a position to stop the illegal behavior, Defendants failed to take remedial action in willful indifference to the violations of Plaintiff's civil rights.
53. As a result of the illegal and continuing course of conduct by Defendants, described herein, Plaintiff has suffered economic damages related to Defendants' adverse actions as well as non-economic/emotional distress damages from these adverse actions and a hostile work environment, loss of compensation, loss of earning power, loss of self-esteem, loss of standing in the community, physical injury, mental injury, the loss of opportunities for prospective employment, and is incurring legal expenses and other expenses as a result of Defendants' actions.
54. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's civil rights, and Plaintiff is therefore entitled to punitive damages under applicable law.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

a. Awarding Plaintiff a promotion and/or instatement to the rank of Lieutenant, with all requisite salary, seniority, pension and other benefits with regard thereto back to the date of the promotions;

b. Awarding Plaintiff attorneys' fees and costs;

c. Pursuant to the applicable provisions New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq., awarding Plaintiff damages, including, but not limited to, equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, as well as all commensurate pension benefits, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, any statutory fines, together with both pre-judgment and post judgment interest, compensation for the adverse tax consequences of a lump sum award, and attorneys' fees and costs of court;

d. For an Order of the Court retaining jurisdiction over this action until Defendants have fully complied with the Orders of this Court, and that the Court require Defendants to file such reports as may be necessary to supervise such compliance; and

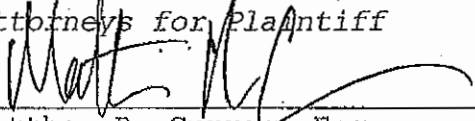
e. For such other, further, additional and different relief as this Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that **Charles J. Sciarra, Esq.**, is hereby designated as trial counsel for Plaintiff.

Respectfully submitted,
SCIARRA & CATRAMBONE, L.L.C.,
Attorneys for Plaintiff

By:


Matthew R. Curran, Esq.

Dated: April 9, 2014

CERTIFICATION PURSUANT TO R. 4:5-1

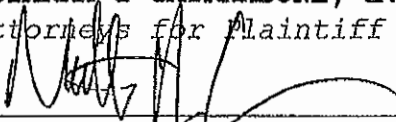
The undersigned, of full age, hereby certifies as follows:

1. The matter in controversy is not the subject of any other pending action.
2. No other action or arbitration proceeding is contemplated.
3. There are no other parties to be joined in this action at the present time.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the said statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,
SCIARRA & CATRAMBONE, L.L.C.,
Attorneys for Plaintiff

By:


Matthew R. Curran, Esq.

Dated: April 9, 2014