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MAY 16 2014

ATLANTIC COUNTY
LAW DIVISION

WILLIAM HEWITT, Plaintiff, v. BOROUGH OF LONGPORT, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – CIVIL PART ATLANTIC COUNTY Docket No. ATL-L- <i>2087</i> -14 Civil Action COMPLAINT, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL
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Plaintiff WILLIAM HEWITT, a resident of Atlantic County, New Jersey, complaining against Defendant, says:

FIRST COUNT

1. Plaintiff WILLIAM HEWITT, was at all times relevant hereto employed as a police officer in various ranks, most currently Lieutenant, by Defendant BOROUGH OF LONGPORT and doing his job with an industrious and conscientious fervor from January of 1989 until the present.

2. As part of its arsenal inventory, Defendant BOROUGH OF LONGPORT owned a drum magazine for a Thompson Sub-Machine Gun, which due to its rareness and uniqueness had value possibly in excess of \$3,000.00.

3. In or around May of 2011 Plaintiff WILLIAM HEWITT was assigned as Rangemaster and Lead Firearms Instructor for Defendant BOROUGH OF LONGPORT,

which duties and responsibilities included supervision of the firearms equipment and arsenal inventory.

4. Sometime during the month of May of 2011, Plaintiff WILLIAM HEWITT was advised by then Sergeant Frank Culmone that he had been approached by an antiques firearms collector who inquired whether or not he could have or attain the drum magazine for a Thompson Sub-Machine Gun referenced above.

5. Plaintiff WILLIAM HEWITT advised then Sergeant Culmone that the same antique firearms collector had made previous inquiries of the same nature and that he denied same and continued to deny same.

6. Sometime in June of 2011, Plaintiff WILLIAM HEWITT learned that then Sergeant Culmone with authorization from the then Chief of Police, but without notice to the governing body of Defendant BOROUGH OF LONGPORT and without notice to him as Rangemaster and Lead Firearms Instructor gave the drum magazine for a Thompson Sub-Machine Gun referenced above to the same antique firearms collector who had previously name inquiry.

7. Defendant BOROUGH OF LONGPORT and its taxpayers did not receive fair market value for the drum magazine for a Thompson Sub-Machine Gun referenced above from the antique firearms collector who attained it.

8. Plaintiff WILLIAM HEWITT immediately objected to the transaction due to the lack of notice to himself, the lack of notice to the governing body of Defendant BOROUGH OF LONGPORT, and the lack of fair market value received on behalf of the taxpayers of Defendant BOROUGH OF LONGPORT.

9. On or about July 13, 2011, Plaintiff WILLIAM HEWITT was appointed Acting Chief of Police for Defendant BOROUGH OF LONGPORT due to a scheduled absence of the then Chief of Police from July 16, 2011 through July 24, 2011.

10. In accordance with the then existing collective bargaining agreement in place at the time, Plaintiff WILLIAM HEWITT filed an overtime slip for his "on call" status.

11. On or about August 1, 2011, Plaintiff WILLIAM HEWITT had approximately 18 hours of overtime time withheld from his pay.

12. Apparently, his request for overtime had angered the then Chief of Police, who told the then Union President that if he had to pay Plaintiff WILLIAM HEWITT said overtime, he would never again appoint him as Acting Chief of Police in his absence.

13. On or about August 3, 2011, Plaintiff WILLIAM HEWITT discussed and advised the then Chief of Police of his intent to attend certain training that came at no cost to the Police Department.

14. On or about August 16, 2011, the then Chief of Police denied Plaintiff WILLIAM HEWITT from attending said training.

15. On or about August 18, 2011, the then Chief of Police threatened to remove Plaintiff WILLIAM HEWITT of certain of his duties.

16. On or about August 22, 2011, Plaintiff WILLIAM HEWITT met with and advised the then Mayor of the various threats and actions of the then Chief of Police.

17. On or about August 23, 2011, Plaintiff WILLIAM HEWITT advised the then Chief of Police in writing that he had discovered that 4 of the 5 Dispatchers for

Defendant BOROUGH OF LONGPORT had never been re-certified by the State of New Jersey as required by existing laws, rules, and regulations.

18. In response, the then Chief of Police advised on August 24, 2011 that he had no intention of sending any of the four non-compliant dispatchers for re-certification.

19. On the same date, in keeping with his earlier threat, the then Chief of Police appointed then Sergeant Frank Culmone as Acting Chief from August 25, 2011 through August 29, 2011, bypassing Plaintiff WILLIAM HEWITT, who was more senior in rank, and in contravention to the ordinances of Defendant BOROUGH OF LONGPORT and/or written policies of the Borough of Longport Police Department which restricted appointments to Acting Chief to the ranks of Captain and Lieutenant.

20. On or about August 25, 2011 Plaintiff WILLIAM HEWITT took a second meeting with the then Mayor and advised of the latest developments. At the same meeting, Plaintiff WILLIAM HEWITT disclosed to the then Mayor about the transaction (without approval from the governing body) with the drum magazine for a Thompson Sub-Machine Gun referenced above.

21. Specifically, Plaintiff WILLIAM HEWITT advised the then Mayor that Defendant BOROUGH OF LONGPORT only received used aftermarket parts and property for an item that may have had fair market value in excess of \$3,000.00. Plaintiff WILLIAM HEWITT also advised the then Mayor that the fact the drum magazine for a Thompson Sub-Machine Gun referenced above was transported from New Jersey to Maryland may have violated Federal Firearms statutes because the proper and necessary paperwork for the inter-state transaction was not completed.

22. On or about August 31, 2011 Plaintiff WILLIAM HEWITT filed a union grievance over the overtime issue referenced above and the illegal appointment of then Sergeant Culmoñe to the position of Acting Chief.

23. On or about September 14, 2011 Plaintiff WILLIAM HEWITT inquired from the CFO of Defendant BOROUGH OF LONGPORT whether or not any resolutions existed as to the sale of the drum magazine for a Thompson Sub-Machine Gun referenced above.

24. On that same date, Plaintiff WILLIAM HEWITT spoke with Captain Denise Walsh of the Official Corruption Unit of the Atlantic County Prosecutor's Office and advised her of his concerns as it related to the transaction involving the drum magazine for a Thompson Sub-Machine Gun referenced above.

25. On or about September 24, 2011, Plaintiff WILLIAM HEWITT filed an internal complaint with Defendant BOROUGH OF LONGPORT about the retaliation and harassment he had been enduring from the then Chief of Police.

26. From the point in time that he reported the aforementioned conduct, Plaintiff WILLIAM HEWITT was caused to endure a steady barrage of retaliation, which included, but was not limited to the following:

- a. Questioning his remote access to work computers from home;
- b. Having his office computer disconnected from the Police Department Network;
- c. Not being advised of computer password changes to the active X server;

- d. Being forced to give up his positions as Range Master and Firearms Instructor;
- e. Having his remote access disabled;
- f. Not being given new passwords to the Enforsys and Active X Servers;
- g. Having the duties of scheduling and assignment of schools taken away from him;
- h. Receiving various counseling memoranda is a disproportionate number compared with his prior law enforcement career;
- i. Having Internal Affairs responsibilities removed from his duties;
- j. Receiving unwarranted discipline;
- k. Not being included on the new interviewee Interview Panel;
- l. Being denied earned overtime;
- m. Being described by the then Chief of Police to third parties as being "in some trouble at work";
- n. Not being given the password to the CAD server;
- o. Being denied used of earned personal days;
- p. Being reassigned the oldest vehicle in the entire fleet of vehicles with no computer access; and
- q. Being relieved of his responsibilities as Evidence/Property Custodian;

27. Plaintiff WILLIAM HEWITT repeatedly voiced his concerns on multiple occasions to multiple superiors and outside agencies that Defendant BOROUGH OF LONGPORT by and through its employees was not complying with his understanding of the law.

28. Most of the concerns and objections of Plaintiff WILLIAM HEWITT were ignored and rebuked by Defendant BOROUGH OF LONGPORT.

29. Instead of responding to his concerns and objections, Defendant BOROUGH OF LONGPORT began targeting Plaintiff, retaliating against Plaintiff, and attempted to set up Plaintiff as the source of insubordination and ineptness for their non-compliance with applicable law and public policy

30. In reality, all of the criticism and action toward Plaintiff WILLIAM HEWITT was pretextual with the true facts being that Defendant BOROUGH OF LONGPORT was retaliating against Plaintiff WILLIAM HEWITT due to his objecting and/or disclosure to their non-compliance with the law and public policy.

31. Rather than properly investigate his complaints, rectify their own deficient policies and procedures, and undo the adverse employment action to which Plaintiff WILLIAM HEWITT was subjected, Defendant BOROUGH OF LONGPORT did nothing.

32. Defendant BOROUGH OF LONGPORT was and is, at all times relevant to this matter, an employer defined by N.J.S.A. 34:19-2.

33. Defendant BOROUGH OF LONGPORT did take retaliatory action against Plaintiff WILLIAM HEWITT because of his disclosure of, objecting to, and/or refusal to participate in activities that he believed to be in violation of law, rule or regulation promulgated pursuant to law or contrary or contrary to established public policy of the State of New Jersey, including, but not limited to disciplining him, subjecting him to a hostile work environment and retaliation, subjecting him to unwarranted discipline, and other adverse employment action.

34. Defendant BOROUGH OF LONGPORT did retaliate against Plaintiff WILLIAM HEWITT for his lawful disclosures and objections by taking adverse employment action against Plaintiff WILLIAM HEWITT in the terms and conditions of his employment, as more specifically set forth above.

35. Defendant BOROUGH OF LONGPORT also had certain obligations pursuant to N.J.S.A. 34:19-7 for which it was deficient.

36. As a result of the aforementioned actions of Defendants, Plaintiff WILLIAM HEWITT has suffered both economic and non-economic damages and has otherwise been irreparably injured.

WHEREFORE, Plaintiff WILLIAM HEWITT demands judgment against Defendant BOROUGH OF LONGPORT as follows:

- A. An injunction to restrain continued violation of the New Jersey Conscientious Employee Protection Act;
- B. Immediate reinstatement and restoration to office, namely the same position held by Plaintiff prior to the retaliatory action of Defendants or an equivalent position;
- C. Full reinstatement of fringe benefits and seniority rights;
- D. Full reinstatement and back pay constituting compensation for lost wages, benefits and other remuneration;
- E. Payment by defendants of the reasonable costs of this action and for attorneys' fees;
- F. Compensatory damages;
- G. Punitive damages;

- H. The assessment of a Civil Penalty as allowed by law;
- I. Any other relief allowed under the Conscientious Employee Protection Act;
and
- J. Any other relief that the Court deems equitable and just.

RULE 4:5-1 CERTIFICATION

Pursuant to R. 4:5-1, I hereby certify that to the best of my knowledge, information and belief, the matter in controversy is not the subject of any other action pending in any Court or arbitration proceedings, and no other action is contemplated. I know of no other parties that should be joined herein.

CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(b)

I certify the Confidential Personal Identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

JURY DEMAND PURSUANT TO R.4:35-1

Plaintiff hereby demands Trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Arthur J. Murray, Esquire as trial counsel in this case.

JACOBS & BARBONE, P.A.

BY: _____

Arthur J. Murray, Esquire

Dated: May 12, 2014

Todd J. Gelfand, Esquire
BARKER, GELFAND & JAMES
 A PROFESSIONAL CORPORATION
 The Laurelwood Corporate Center
 1101 Laurel Oak Road ~ Suite 110
 Voorhees, New Jersey 08043
 (856) 874-0555
 (609) 601-8577 - Telefax
 TGelfand@BarkerLawFirm.net
 Our File Number: 48600-12

WILLIAM HEWITT,
 Plaintiff

 v.

 BOROUGH OF LONGPORT

 Defendants

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 ATLANTIC COUNTY

 Docket Number
 ATL-L-2087-14

 Civil Action

NEGOTIATED SETTLEMENT AGREEMENT AND GENERAL RELEASE

1. The parties to this Negotiated Settlement Agreement and General Release (the "Agreement") are William Hewitt, ("Plaintiff"), and the Borough of Longport ("Defendant" or "the Borough"). This Agreement is the product of negotiation and compromise between Plaintiff and Defendant.

2. Plaintiff and Defendant have chosen to enter into the Agreement in order to avoid further proceedings with respect to

certain claims that Plaintiff has made against Defendant, and to release the Borough and its respective representative(s), insurer(s), agent(s), officer(s), director(s) commissioner(s), servant(s), attorney(s) and employee(s) of the Borough from any and all causes of action, claims and/or demands of every type, whether known or unknown, sustained or allegedly sustained, presented or which may have been presented by anyone and/or all of them arising from or in any way connected with any of the matters alleged by anyone or more of them in the civil action filed in Atlantic County Superior Court/ Law Division known as William Hewitt v. Borough of Longport, bearing docket number L-2087-14 (the "Litigation"). It is recognized by the parties that a previous action known as William Hewitt v. Borough of Longport Police Department, Borough of Longport, its Agents, Servants, Employees,, and/or representatives, and John or Janes Does 1-10, those being fictitious names of persons not yet known, who unlawfully disciplined the Plaintiff and/or otherwise violated her [sic] rights, bearing docket number ATL-L-6960-13 has been previously dismissed with prejudice with the damages sought therein subsumed into the litigation referenced here bearing docket number L-2087-14 and that all claims made or which could have been made in both pieces of litigation are being settled and/or released by this

Agreement. All references herein to "the litigation" refer to the combined matter under docket number L-2087-14.

3. Plaintiff understands and agrees that Defendant denies each and every allegation of wrongdoing made by Plaintiff in the above-captioned litigation.

4. Plaintiff and Defendant understand and agree that the making of this Agreement shall not, in any way, be construed or considered to be an admission by any Defendant of guilt or non-compliance with any federal, state or local law, or of any other wrongdoing whatsoever.

5. In exchange for the promises made by Defendant herein, Plaintiff agrees to the dismissal, with prejudice, of the entirety of the Complaint filed in the Litigation, upon satisfaction of the terms of this Agreement including payment of the sum set forth herein.

6. Plaintiff unconditionally and irrevocably discharges and releases Defendant, and its representative(s), insurer(s), agent(s), officer(s), director(s) commissioner(s), servant(s), attorney(s) and employee(s) of and from any and all claims, known or unknown, that Plaintiff has or may have against the Defendant as of the date of execution of this Agreement, including, but not limited to those claims set forth in the Litigation, or otherwise

arising out of his employment or termination of employment or any alleged violation of:

- Worker's Compensation;
- Statutes, N.J.S.A. 34:15-1 et seq.;
- Claims under Pierce v. Ortho.;
- The National Labor Relations Act;
- Title VII of the Civil Rights Act;
- Civil Rights Act of 1991;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Employee Retirement Income Security Act;
- The Fair Credit Reporting Act;
- The Immigration Reform Control Act;
- The Americans with Disabilities Act;
- The Rehabilitation Act;
- The Age Discrimination in Employment Act;
- Executive Order 11246;
- The Fair Labor Standards Act;
- The Occupational Safety and Health Act;
- The Family and Medical Leave Act;
- The Equal Pay Act;
- The Uniformed Services Employment and Reemployment Rights Act;
- Worker Adjustment and Retraining Notification Act;
- Employee Polygraph Protection Act;
- The New Jersey Law Against Discrimination;
- The New Jersey Civil Rights Act;
- The New Jersey Family Leave Act;
- The New Jersey State Wage and Hour Law;
- The New Jersey Conscientious Employee Protection Act;
- The New Jersey Equal Pay Law;
- The New Jersey Occupational Safety and Health Laws;
- The New Jersey Smokers' Rights Law;
- The New Jersey Genetic Privacy Act;
- New Jersey laws regarding Political Activities of Employees, Lie Detector Tests, Jury Duty, Employment Protection, and Consumer Reports, Discrimination; any other federal, state or local civil rights law or any other local, state or federal law, regulation or ordinance;

- Any public policy, contract (express, written or implied), tort, or common law;
- Any claims for vacation, sick or personal leave pay or payment pursuant to any practice, policy, handbook or manual of Defendant; or
- Any allegation for costs, fees, or other expenses including attorneys' fees.

7. Plaintiff fully understands that this Agreement includes waiver and or dismissal any and all claims related in any manner to Plaintiff, William Hewitt's employment based upon anything which has occurred up until the date this Agreement is signed, and any claims Plaintiff has/may have up until the date this Agreement is signed.

8. Plaintiff agrees to accept as part of his disciplinary record and waive any further action to appeal or otherwise challenge the one day suspension issued by memorandum on November 20, 2013 relating to unsatisfactory performance of property and evidence inventory and/or property and evidence storage and record keeping. Defendants agree that there shall be no further or additional disciplinary based upon the event or events described in the aforesaid one day suspension action and that no attempt to enlarge the discipline from this one day suspension based upon any allegations pre-dating this agreement concerning the property and evidence function as to Plaintiff Hewitt.

9. Terms of Settlement:

(a) The defendant hereby agrees to pay plaintiff William Hewitt, the settlement amount of \$70,000. This settlement amount is for non-economic damages including pain, suffering, humiliation, embarrassment, loss of enjoyment of life, disability, attorneys' fees and costs, said settlement amount being fully and completely inclusive of all claims of any nature, sort, or variety, including claims for attorneys' fees and costs incurred by counsel for plaintiff. No part of the payment represents, or is intended to represent, payment for lost income or for punitive damages, it being the intention of the parties that their payment is solely to compensate the plaintiff for losses in the nature of physical personal injury. The parties stipulate to make it clear that the payment is not intended to represent economic gain to the plaintiff. Nonetheless Plaintiff Hewitt waives and hereby releases the Defendant and its elected and appointed officers and employees, insurers and representatives for any such claim of economic damage relating to or stemming from the subject matter of the lawsuit or anything that has happened to date pertaining to Plaintiff's employment with the Borough of Longport.

(b) Plaintiff represents that his allegations against the defendant arise out of the alleged conduct which plaintiff contends resulted in non-economic damages, including loss of enjoyment of life, humiliation and embarrassment, notwithstanding the fact that

defendant vigorously and wholly denies plaintiff's allegations and are settling their matter for reasons other than the merits of plaintiff's claims, including the avoidance of the cost of litigation. Settlement does not represent an admission of liability by any party.

(c) Parties understand and agree that an IRS form 1099 designating the settlement amount as "other income" may be issued. Plaintiff agrees to assume full liability for applicable state, federal and local taxes, if any, that may be required by law to be paid with respect to any settlement payment described herein. Plaintiff further agrees that in the event that the Internal Revenue Service or any other taxing authority deems any tax, interest, penalties or other amounts to be due from defendant with respect to her settlement, he will indemnify the defendant for any sums defendant may be required to pay, exclusive of attorneys' fees and costs. It is the intent of the parties for the payment in (a) above will be defendant's total payment to or for the benefit of plaintiff.

(d) The parties understand and agree that plaintiff assumes full liability for all applicable state, federal and local taxes, if any, that she may be required by law to pay with respect to any settlement payment described herein. Plaintiff further agrees that in the event the Internal Revenue Service or any other taxing

authority finally determines, after any contested proceedings, that any taxes, interest, penalties or other amounts are due from the defendant, same are the responsibility of plaintiff.

(e) Plaintiff agrees that, but for their Settlement Agreement and General Release, she would not be entitled to the aforesaid payments and other terms of settlement described herein.

10. Form of Payment:

(a) In exchange for the promises made by Plaintiff and his execution of this Agreement, Defendants agree to make the settlement payment as follows:

A check made payable to the law firm of Jacobs and Barbone in the amount of Seventy Thousand Dollars (\$70,000.00)

(b) These terms are in full satisfaction of all claims for personal injury, compensatory damages or attorneys' fees and disbursements, known or unknown, asserted or unasserted including, but not limited to, claims for emotional distress, pain and suffering, legal or equitable relief, reinstatement, back or front pay, lost benefits, for all other statutory claims, all common law claims, tort claims, contract claims (express, written or implied), and costs of this action.

11. Upon any breach of this Agreement by Plaintiff, Defendant, or either of them, may institute an action to specifically enforce the terms of this Agreement and seek damages

resulting from such breach including return of the consideration paid hereunder. Should Defendant prevail in such action, it will be entitled to an award of attorneys' fees and costs in addition to any other legal or equitable relief. Defendant shall be subject to same terms as set forth herein upon a breach of this Agreement.

12. This Agreement fully supersedes any prior agreements or understandings between the parties. Plaintiff also acknowledges that Plaintiff has not relied on any representation, promises, or agreements of any kind made in connection with the decision to sign this Agreement, except for those set forth in this Agreement.

13. This Agreement may not be modified except upon express written consent of both parties wherein specific reference is made to this Agreement.

14. Plaintiff acknowledges and agrees that he has been given a reasonable period of time to consider the terms of this Agreement. Plaintiff further acknowledges that he has reviewed the terms of this Agreement and the effects of his signing this Agreement with legal counsel of her choosing. Plaintiff understands and agrees that this Agreement settles, bars and waives any and all claims that they have or could possibly have against Defendant.

15. This Agreement shall be governed and conformed in accordance with the laws of the State of New Jersey without regard to its conflict of laws provision.

16. In the event that any provision contained in this Agreement is declared invalid, illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. Moreover, if any such provision determined to be invalid, illegal or unenforceable can be made valid, legal or enforceable by modification thereof, then the party for whose benefit the provision exists, may make such modification as necessary to make the provision valid, legal and enforceable.

EXECUTION. Executed by the Releasor on this _____ day of _____, 2014.

William Hewitt,
Releasor

STATE OF NEW JERSEY :
: ss:
COUNTY OF ATLANTIC :

I, certify that on this _____ day of _____, 2014 personally came before me William Hewitt, who acknowledged under oath to my satisfaction that he is the person named herein and that he personally signed this document; and, that he signed, sealed, and delivered this document to be his voluntary act and deed.

Notary Public,
State of New Jersey
My Commission Expires:

Executed: on behalf of the Borough of Longport, this 23rd
day of December, 2014



Nicholas Russo, Mayor
Borough of Longport

STATE OF NEW JERSEY :
: SS:
COUNTY OF ATLANTIC :

I certify that on this 23rd day of December, 2014
personally came before me Nicholas Russo, who acknowledged under
oath to my satisfaction that he is the person authorized to sign
this document on behalf of the Borough of Longport.



Notary Public,
State of New Jersey
My Commission Expires:

PAMELA TOMASSI
NOTARY PUBLIC OF NEW JERSEY
ID # 2431226
My Commission Expires 3/13/2018

