

Martin Brannan
PO Box 4571
Quartzsite, AZ 85359-4571
Tele: (928) 575-6727
Fax: (927) 927-6315

Arizona State Personnel Board

RECEIVED BY THE
NOV 5 2012
PERSONNEL BOARD

Martin Brannan,)
Complainant,)
-vs-)
Town of Quartzsite, Edward L. Foster,)
Mayor of the Common Council of the Town)
of Quartzsite, Michael Jewitt, Vice-Mayor)
of the Common Council of the Town of)
Quartzsite, Patricia Anderson, Member of)
the Common Council of the Town of)
Quartzsite, Carol Kelley, Member of the)
Common Council of the Town of)
Quartzsite, Norma Crooks, Member of the)
Common Council of the Town of)
Quartzsite, Patricia Workman, Member of)
the Common Council of the Town of)
Quartzsite, Mark Orgeron, Member of the)
Common Council of the Town of Quartzsite)
and Laura Bruno, "Interim Town Manager")
of the Town of Quartzsite,)
Respondents.)

COMPLAINT

Complainant

Martin Brannan
PO Box 4571
Quartzsite, AZ 85359-4571
(928) 575-6727

Counsel for Complainant

None at this time.

Respondents

Mayor Edward L. Foster
PO Box 2812
Quartzsite, AZ 85346-2812
(928) 927-4644

Vice-Mayor Michael Jewitt
PO Box 2812
Quartzsite, AZ 85346-2812
(928) 927-4644

Council Member Patricia Anderson
PO Box 2812
Quartzsite, AZ 85346-2812
(928) 927-4644

Council Member Carol Kelley
PO Box 2812
Quartzsite, AZ 85346-2812
(928) 927-4644

Council Member Norma Crooks
PO Box 2812
Quartzsite, AZ 85346-2812
(928) 927-4644

Council Member Patricia Workman
PO Box 2812
Quartzsite, AZ 85346-2812
(928) 927-4644

Council Member Mark Orgeron
PO Box 2812
Quartzsite, AZ 85346-2812
(928) 927-4644

“Interim Town Manager” Laura Bruno
PO Box 2812
Quartzsite, AZ 85346-2812
(928) 927-4644

Nature of Complaint

This action is brought pursuant to A.R.S. § 38-532.

Jurisdiction

The State Personnel Board has jurisdiction pursuant to A.R.S. § 38-531 et seq. and *McDonald v. Campbell, State Personnel Board, Real Party in Interest*, 169 Ariz. 478, 821 P.2d 139 (1991). Although Arizona's whistle-blower laws, A.R.S. §§ 38-531-534, "do not leave a well-defined roadmap of legislative intent," *McDonald* at 480, 821 P.2d at 141, the exercise in statutory construction employed by the Arizona Supreme Court in *McDonald, supra*, in Section III demonstrates why a Town Employee, even one who is not a law enforcement officer, is entitled to file a whistle-blower complaint with the State Personnel Board. *Id.* at 479-483, 821 P.2d at 140-144.

Key in the analysis applied by the *McDonald* Court was the placement of certain exemptions in sections 38-531 through 38-534 and the fact that applying the exclusions contained in the Personnel Board's jurisdiction pursuant to the State's merit system as set forth in Title 41 leads to the nonsensical result that the exemptions contained in Title 41, an earlier enactment, removes jurisdiction from that class of employees over which the subsequently enacted relevant portion of Title 38 clearly means to include. *Id.* at 480-481, 821 P.2d at 141-142. The Supreme Court was most concerned with that class of employees explicitly excluded from being able to file whistleblower complaints, i.e., certain university and board of regents employees which were protected by provisions in place at the time by the university and board of regents. *Id.* at 480, 821 P.2d at 141.¹ The Supreme Court held that the earlier provisions of Title 41 were not intended to limit the scope of jurisdiction that the State Personnel Boards possesses under Title 38. *Id.* at 481-482, 821 P.2d at 142-143 ("These provisions [in Title 41], essentially in their present form, were effective as early as 1968, long before the enactment of the first whistle-blowing statutes in 1985. ... We hold that the earlier enacted exemption was not intended to apply").

Ultimately, the Supreme Court comes to the most logical possible conclusion, i.e., that the legislature knows how to exclude public employees from whistle-blower protection under Title 38, and does so, explicitly, when that is its legislative intent. In other words, where words suggest or context suggests that an employee might be protected under Title 38, Chapter 3, Article 9, unless there is a specific exemption countering that suggestion, the Court should read the Article as inclusive. *Id.* at 483, 821 P.2d at 144. As the *McDonald* court said:

If we were to hold that by reason of the exemption found in [Title 41], employees of the Supreme Court are exempt from the Personnel Board's jurisdiction for enforcement of the whistle-blowing statutes, the same rationale would compel the conclusion that all of the other employees listed in [Title 41] would be similarly exempt. While we can conceive of policy concerns that possibly motivated the legislature in exempting the employees listed in [Title 41] from coverage under the state merit system, we find no indication that the legislature was motivated by these same policy concerns when it enacted the whistle-blowing statutes for the protection of state employees. If such had been the

¹ Although the Supreme Court states in *McDonald*, that A.R.S. § 38-533(9) contained the only exception to the class of public employees excluded from whistle-blower protection, A.R.S. § 38-531(1), as it existed at the time, specifically excluded officers or employees of a municipal corporation established for the purpose of reclamation and distribution of water and the generation of electricity." *McDonald* at fn 1.

case, it would have been a simple matter for the legislature to enact other express exemptions as it did in the case of state university and Board of Regent employees.

Id.

Facts

Complainant was hired to serve as a full-time in-house town attorney by the Town of Quartzsite commencing July 18, 2011. At the time of hire, the Common Council for the Town of Quartzsite consisted of Mayor Ed Foster, Vice-Mayor Barbara Cowell, and members Jerry Lukkasson, Patricia Anderson, Jose Lizarraga, Joe Winslow and Bob Kelley. Following a recall election in August 2011, a special election to fill a vacancy and a primary election in March 2012 and a final election in May 2012, only Ms. Anderson remains on the Common Council.

At the time of my hire, I was advised that the Town was factionalized, but this was something of an understatement. There appear to be three factions, one led by Richard Oldham, the Town's first mayor and also its first mayor to be recalled from office, one led by Jerry Lukkasson, and the remainder of the Town's populace. I initially was under the assumption that the faction led by Lukkasson, which was supported by the chief of police and appeared to be supported by the town manager, assistant town manager and the director of planning and zoning, was interested first and foremost in the creation of a Town which functioned legally and existed for the improvement of the lives of all of the residents of Quartzsite.

At the time of my hire, I was told that the Town was looking for a "hard-ass" town attorney who would make sure that the town followed the law and would not be a "yes-man," but rather would give the Council and Administration the best advice possible without concern for whether that advice permitted or prevented the Town from acting. In the beginning, the Council was receptive to advice and appeared to be responsive to the efforts I was making, at the insistence of the Arizona Solicitor General's Open Meeting Law Enforcement Team (OMLET), to keep the Council acting legally and in compliance with open meeting laws. Initially, this task was quite difficult given Mayor Foster's penchant for the theatrical and lack of understanding of the way a Council-Manager form of government, like Quartzsite works. Mayor Foster was recalled as mayor in August, 2011 and replaced by former Council Member Jose Lizarraga.

Throughout Mayor Lizarraga's term as mayor, I cannot recall a single legitimate open meeting law violation. The Council was not perfect, but seemed to be striving toward full and complete compliance. During this time, Lukkasson departed the Council to run for mayor in the March/May election cycle and Bob Kelley passed away. Michael Jewitt was appointed to fill the seat vacated by Mayor Lizarraga until the date of the next regularly scheduled election, March 13, 2012, at which time he was elected at a special election to fill the remainder of Mayor Lizarraga's vacated council seat. Bob Kelley's wife, Carol, was appointed to fill the seat made vacant by Bob's passing. Lukkasson's seat remained vacant.

Following the March 13, 2012 special and primary election, the loser of the special election, John Prutch, who is the chairman of the fire board for which Mayor Lizarraga works as a fire captain, filed a suit challenging the Council's ruling that the election was a special election rather than a primary election requiring a runoff if the winner does not garner more than 50% of all ballots cast in total. Prutch's case was dismissed under the doctrine of laches by the Superior

Court and he filed a timely notice of appeal. He filed a motion for expedited processing of his appeal, but that motion was denied pending the case becoming at issue. He then filed a motion to preclude the Town from responding to his appeal which was denied. The Town then filed an answer and a motion to dismiss for mootness. The Court of Appeals denied, preliminarily, the Town's motion to dismiss, with notification to the clerk that the motion be brought back before the panel once the case is under advisement. Prutch then filed a renewed motion for expedited processing of his appeal which was, again, denied. The case is currently at issue, but no panel has been assigned and the case is not yet under advisement.

While the proceedings in Superior Court and the Court of Appeals were pending, Prutch appeared to be placing pressure on Mayor Lizarraga. Lizarraga missed several meetings stating that he had been told if he missed a part of any of his shift while serving as mayor, his job as fire captain would be in jeopardy.

The March 13 primary election was not dispositive of any of the elections for full council terms. At the May 15 runoff election, Foster, Workman and a local teacher aligned with them, at least during the election cycle, Mark Orgeron garnered the most votes. The Town's elections are handled by the County's election department under an intergovernmental agreement. The County's election department provided the final tally of votes for the May 15, 2012 election after 3:00 p.m. on the day preceding the next regularly scheduled council meeting precluding Town Staff from placing the canvass of the election on the agenda for that meeting.

Apparently under pressure from Prutch, who canceled a fire board meeting in order to attend the Common Council meeting must to the irritation of a member of the fire board who traveled over 100 miles to attend that meeting, Lizarraga, in a snit because we had not received the canvass in time to prepare a resolution and publish an agenda 24 or more hours before the meeting, without a motion from or the approval of the Common Council, adjourned the meeting before it could even begin. After conferring with Chris Munns of OMLET and reviewing the state law, town code and Roberts Rules of Order regarding meetings and adjournment of meetings by dictate, I advised the Vice-Mayor of the Common Council that it could resume the meeting with or without the mayor if a quorum could be assembled and if a majority of the Council approved the agenda and agreed to move forward with the meeting. The meeting was reconvened and Norma Crooks was appointed to fill the seat vacated by Mr. Lukkasson.

Before adjourning the meeting on May 22, 2012, Mayor Lizarraga ordered staff to schedule a meeting for May 23, 2012. An agenda was prepared but no quorum appeared so no meeting was held.

Three Council Members then requested a special meeting to be held on June 4, 2012, the last day the Council could lawfully canvass the votes. At this meeting, the Council found Patricia Workman qualified to serve on the Council but found that Foster and Orgeron were not qualified to serve on the Council. The Council determined that Orgeron was a qualified voter in Yuma County within the year next preceding the May 15, 2012 election and could not, therefore, be a Quartzsite resident for the year required by law to be eligible to serve on the Council. The Council determined that Foster owed the town a penalty, ordered by the Superior Court, when he

failed to prosecute a civil suit he brought against the Town. Absent a waiver by the Council and the Town, I cannot reveal what advice I gave the Council on these issues.

Orgeron filed a suit in federal court which he tried to use to enforce Foster's claim to be seated on the Council as well. The federal court appeared destined to rule that, notwithstanding his residence and ability to vote in Yuma County on May 15, 2011, Orgeron was nevertheless qualified to serve on the Council because, apparently, he didn't mean to be qualified to vote in Yuma County, but rather meant to be a Quartzsite resident even as he had all of his vital mail sent to his Yuma County address or, like an electron in quantum theory, and contrary to the express dictates of Arizona law, Orgeron could be in two places at once.

I assisted Arizona Municipal Risk Retention Pool (AMRRP) counsel Jeff Murray throughout his defense of the Council in federal court. I assisted Murray in preparing for cross-examination of Orgeron which was, at the least, an embarrassing experience for Orgeron. Rather than risk a negative ruling, the Council determined that, by this time, Orgeron was now eligible to serve on the Council and appointed him to fill the vacancy that the Council declared as a result of his ineligibility. This also had the effect of removing Foster's claim to office from federal court. Orgeron was seated on July 27, 2012.

At this point, the Council consisted of Patricia Anderson, Michael Jewitt, Carol Kelley, Norma Crooks, Patricia Anderson and Mark Orgeron. The mayor remained disqualified by the Council. Patricia Anderson was the only person remaining on the Council who was on the Council when I was hired.

On August 14, 2012, the Council held a public hearing on a proposal presented by the Town Manager on behalf of the Freedom from Religion Foundation. Although I was not the complainant which led FfRF to submit its proposal (to comply with the law and replace secular and proselytizing Christian prayer with a non-sectarian moment of silence), I had made my feelings about the fact that nearly every prayer as invocation before council meetings invoked Jesus Christ by name which is sectarian, proselytizing and illegal to town manager Taft prior to the meeting. Additionally, my membership on a website called "ThinkAtheist.com" resulted in my being "outed" as an atheist, leading to Ed Foster to publish his opinion that I must, therefore, be amoral and unworthy of being town attorney, a fact that his "running mates" as described by Mr. Orgeron during his testimony in federal court, would have reason to know. Additionally, Council Member Jewitt clearly knew, from a multitude of previous conversations about my absence of faith and distaste for proselytizing prayer as invocation.

I provided the Council only with the relevant state and federal constitutional provisions in the form of a memo. At the direction of my supervisor, Town Manager Taft, I did not give the Council advice about the letter. Town Manager Taft was concerned that if I did give advice to the Council, I would just be exposing myself to even more isolation and abuse.

During this meeting, the relevant portion of which is attached to the original copy of this complaint and is available at <http://ci.quartzsite.az.us/Council!%20Meeting%20081412.wma>, the level of vitriol, disrespect, anger, and dishonest discourse by the public, without refutation or condemnation by the Council, and by Council members far exceeded the bounds of decency one

would expect in a civilized community. I felt belittled, outcast and unwelcome. Adding injury to insult, the Council then voted, unanimously, to continue promoting the Christian Religion in violation of the United States and Arizona Constitutions at meetings I was required, by law, to attend.

Following the meeting, I made my disgust at what I had just endured known to town manager Taft. She put in a call to AMRRP for a Personnel Action Lifeline referral to talk to an attorney about what she had just witnessed and about which she had been equally disturbed. The attorney, Sonya K. Boun, advised Ms. Taft that the Council was just dead wrong in its actions and that she, Ms. Boun, would be willing to address the Council to prevent my having to face a hostile audience and re-open the wounds of my public "outing" and ridicule from earlier. This never came to be, however.

In May of 2011, ten Quartzsite Police Department employees filed an anonymous "omnibus" complaint with the Arizona Police Officer Standards and Training Board (AZPOST) which led to tandem investigations, one conducted by the law firm Jackson|Lewis attorney Sonya K. Boun at great expense (\$22,861.73) to the Town and two conducted by the Arizona Department of Public Safety which probably cost the State a similar or greater amount in person-hours expended. The Boun report was completed in early July 2012 and focused on administrative and management complaints. Because the ten Police Department Employees failed to make their complaint to a public body as defined by A.R.S. § 38-531(5) and failed to set forth the date of the disclosure and the name(s) of the employee making the disclosure, and because the Boun report suggested that the employees had been less than truthful during the investigation, an internal investigation was launched to substantiate or refute Ms. Boun's findings, to determine whether the employees had caused harm to the Town or the Police Department and to determine whether the employees were likely to be able to overcome their dislike for the chief of police and perform professionally while the DPS investigations were being conducted. Due to the fact that the Department had an obvious conflict in investigating those who made disparaging remarks against the chief of police, Assistant Town Manager Al Johnson was delegated the Town Manager's authority as the Town's Personnel Officer and ordered to conduct the investigation.

All ten employees were placed on administrative leave.² The first three officers interviewed were determined to be redeemable and were reinstated over the vehement objection of Chief of Police Jeff Gilbert. The fourth and fifth officers interviewed and the administrative clerk interviewed appeared to be dishonest in their communications. Mr. Johnson ordered them to take a polygraph examination. Rather than submit to the polygraph, the officers and administrative clerk filed a suit for injunctive relief in Superior Court and obtained a Temporary Restraining Order (TRO). The case was moved to federal court and the seven employees failed to attempt to renew their TRO or obtain a preliminary injunction. They were all then terminated based on the apparently false allegation against Gilbert that they made knowing or having reason to know it was false along with myriad allegations of being away from their duty location while on administrative leave, falsifying time cards and making statements to the press which

² The employees were not actually placed on administrative leave as defined by Quartzsite Town Code, but rather were suspended from performing police duties and instructed to be at their residences between the hours of 8:00 a.m. and noon and 1:00 p.m. and 5:00 p.m., but, for the sake of simplicity, Complainant will refer to this as "administrative leave."

substantially undermined their credibility and ability to perform their assigned duties. In addition to their federal suit, six of the seven employees filed complaints pursuant to A.R.S. § 38-532 with the State Personnel Board. The Town, realizing that, although it promises whistleblower protection to all its employees regardless of position or temporary, probationary or confirmed status, did not object to these cases being heard by the Appeals Board. One complaint, involving William Ponce, was dismissed because it was not filed within the time set by statute and rule. The remaining complaints, involving Stephen Frakes, James C. Kemp, Shelly Norris, Herlan Yeomans and Heriberto Dominguez, were dismissed because they failed to file the complaint upon which they were fired with a public body as defined by A.R.S. § 38-531. At no time did the Town take the position that its Personnel Board (as referred to in the Town Code) or its Personnel Advisory Board (as referred to in the Town Personnel Policy) had jurisdiction to hear A.R.S. § 38-532 complaints.

As the federal suit drug along and the Town attempted to institute the remedial measures suggested to address Gilbert's shortcomings as an administrator and manager, meeting with nothing more than resistance and ridicule of the Town's efforts by Gilbert, the DPS investigations also bogged down. One investigation, into whether Gilbert and two of his officers engaged in disturbing the peace by removing an unruly woman from a public meeting at the request of the Council, took about seven months to complete and generally cleared the officers involved of any criminal conduct. The second report, detailing allegations of misuse of the National Criminal Information Computer system (NCIC) and the Arizona Criminal Justice Information System (ACJIS); tampering with a public record and witness intimidation took well over a year to complete, however. The second report provided information from which a reasonably prudent person could conclude that Gilbert did misuse the NCIC and ACJIS and did tamper with a witness. The Town was asked, however, to hold on to the information while it was reviewed by the AMRRP attorneys defending the federal lawsuit involving the seven employees, so no action was taken immediately upon receipt of the report. The Attorney General's Office did decline to prosecute, but it is my understanding that the charges of witness tampering are being revisited by that agency.

By the time the Town received clearance from the AMRRP attorneys to take action involving the DPS report and Gilbert's complete lack of cooperation with remedial communications training efforts, Gilbert and one of his sergeants, a female with whom he appears to be romantically, or at the very least, inappropriately involved, had conspired to submit a time card for the charge which stated that she had worked nine hours and taken one vacation hour on a day when the Town knew that the sergeant was only in Quartzsite available to work for no more than six hours. On August 23, 2012, Town Manager Taft placed Gilbert and the sergeant on administrative leave³ with their duty locations being their residences between the hours of 8:00 a.m. and noon and between 1:00 p.m. and 5:00 p.m. pending an investigation into the allegedly falsified time card.

On August 24, 2012, at or about 1:30 p.m., Council Member Orgeron brought in a demand that an agenda be posted and a Common Council meeting be held on August 25, 2012 at or about 4:00 p.m. The Town had never held a meeting on a Saturday in the three years reported on the Town's web site. Additionally, at least one of the locations where the town posts notice pursuant to its code is not available to the public at all times such that Saturdays do not count as notice in

³ See fn 2.

Quartzsite. A.R.S. § 38-431.02(C). I advised the Council and staff that holding a meeting on a Saturday would not be legal and advised staff not to attend such a meeting because of its illegality. At least three of the Council Members (Orgeron, Kelley and Crooks), were well aware of my opinion and indicated that they intended to hold the meeting anyway. This forced the Town to issue a press release stating that staff would not be attending this illegal meeting. The meeting was intended to take some personnel action against Town Manager Taft and to reinstate Gilbert.

I also notified OMLET that the Council intended to hold a Saturday meeting in violation of the Open Meeting Laws on August 24. On August 25, I was forced to contact Robert Halliday, the Director of the Arizona Department of Public Safety and Curt Bagby, the La Paz County Sheriff's Patrol Lieutenant Curt Bagby to advise them that the meeting had not yet, to Complainant's knowledge, been postponed and that we would need assistance if the Council violated the Town Code and reinstated Gilbert and Gilbert, emboldened by a mob, attempted to take control over the Police Department. Director Halliday ordered Sergeant Hinderliter to cancel training for his officers to make them available to back up the Quartzsite Police Department and the Sheriff's Office.

On August 27, 2012, at a special meeting of the Town Council, the Council met and adjourned every item on the agenda, including the statutorily mandated adoption of the Town's FY 12-13 budget. Also on August 27, 2012, Council Member Orgeron again appeared with a demand to hold a special meeting on August 28, 2012, this time adding taking personnel actions involving the Town Manager, the Assistant Town Manager, the Chief of Police and the female sergeant. Also on August 27, 2012, I filed a complaint for injunctive relief, a motion for preliminary injunction and a motion for temporary restraining order enjoining the Council from violating the Town Code with regard to the Assistant Town Manager, the Chief of Police and Sergeant Garcia and to limit the Council to acting within the law regarding the Town Manager.

On August 28, 2012, the Superior Court issued an Order re: Temporary Restraining Order granting the TRO for everything except action concerning the Town Manager but stating that the denial of the TRO regarding the Town Manager was limited to dismissing her without cause as statutorily permitted. Also on August 28, 2012, the Council met and placed the Town Manager on Administrative Leave.⁴

On August 28, 2012, acting Town Manager Terry Frausto signed a delegation of authority acknowledging the inherent conflict of interest she had given her husband's position as second in command at the police department designating Al Johnson as the Personnel Officer for Gilbert and Garcia. This was probably superfluous inasmuch as Town Manager Taft had never rescinded her earlier order making Mr. Johnson the Personnel Officer for all Town employees which would free her to review the recommendation of the personnel board of the town council following an appeal of a personnel decision.

On September 4, 2012, Assistant Town Manager Johnson and I went to Phoenix to meet with an investigator at the Attorney General's Office, AMRRP's risk analyst Mike Branham and with

⁴ See fn 2

our attorneys from Jackson|Lewis and the president of AMRRP in an effort to warn them of the actions that the Council had been taking and to salvage the Town's relationship with AMRRP.

While Mr. Johnson and I were in Phoenix, Mr. Orgeron again attempted to schedule a special meeting for September 5, 2012. I advised the acting town manager and town clerk that I would need to review any agenda before we held any meeting given the repeated efforts by Mr. Orgeron and his entourage to break town code and what appeared to me to be another illegal meeting but couldn't be certain about until I had done additional research. When I returned on September 5, I put the reasons why I believed the meeting was illegal in writing and was assured that the town would take no further action until the regularly scheduled meeting on September 11, 2012.

On September 10, 2012, Mr. Johnson gave me a memorandum that he had prepared concerning this decision regarding a complaint made by Officer Anton Coetzee. I prefer not to proofread documents on paper and asked that Mr. Johnson to email the document to me which he did sometime thereafter. I also had a discussion with Mr. Johnson about the fact that Gilbert was routinely violating the terms of his administrative leave,⁵ had issued a press release falsely claiming to have been exonerated by the Attorney General's decision not to prosecute him based on there being "no reasonable likelihood of conviction," something Gilbert knew is definitely not the equivalent of being exonerated. Also, on September 10, 2012, Mr. Johnson consulted with me as the Town's Attorney regarding whether I believed the results of Coetzee's complaint, combined with Gilbert's insubordinate behavior toward Ms. Taft's instructions and other misfeasance, nonfeasance or malfeasance on Gilbert's part was sufficient to terminate Gilbert's advice.

On the morning of September 11, 2012, Mr. Johnson issued a letter terminating the contract between the Town and Gilbert for willful misconduct and gross negligence. Later on September 11, 2012, the Council met in executive session concerning its plans to hire an interim town manager against my advice as presented on the Notice of Meeting. In violation of Town Code Section 3-2-5, I was initially excluded from the meeting. I asked the Town Clerk to record the executive session because I would not be able to review the minutes of the executive session for accuracy before they would be sent to OMLET as required by the Town's "probation." At some point during the executive session, I was invited to attend. I attended the remainder of the executive session before the meeting went back into open session. During the open session, the Council adjourned the meeting until September 12, 2012 at 2:00 p.m.

At some point before 2:00 p.m. on September 11, 2012, a revised agenda was prepared adding to the beginning of the meeting an item to create the position of "interim town manager"⁶ as an emergency ordinance. Because an emergency ordinance become effective immediately and deprives the public of its right to refer the ordinance if the public so wishes, although not technically required to do so by the Open Meeting Law, I noted that the ordinance, if passed unanimously,⁷ would take effect immediately and would not be subject to referendum. A second

⁵ See fn 2

⁶ I am well aware that there is no actual interim when the current town manager remains employed, even if she is on "administrative leave," but used the term in the draft ordinance for simplicity's sake.

⁷ At this point there was still no mayor, the position still being in litigation, but the ¾ vote necessary to pass an emergency measure remains ¾ of 7, which given a six person Council required unanimity.

item was added allowing the Council to go into executive session to discuss employment of someone to fill the position which, if unanimously passed, would have been created by the first item. The final item added to the previous day's agenda was an action item appointing Laura Bruno (how the Council knew who they would be appointing without holding some sort of serial or secret meeting is beyond my ken) to fill the position which would have been created if item one were unanimously passed.

On September 11, 2012, I was also served with a notice of termination of contract from Albert Johnson contingent upon the council hiring a second town manager or, as the Town calls her and she calls herself, an interim town manager at the September 11, 2012 meeting which was adjourned and continued on September 12, 2012. Based on the delegation of authority granted to Mr. Johnson by Alex Taft to be the Town's Personnel Officer sometime between October 2011 and December 2011, which, to the best of my knowledge was never rescinded, Mr. Johnson and I believed that he had been delegated all of the Personnel Officer authority vested in the Town Manager, including making a reasonable and logical decision to terminate my employment and minimize financial exposure to the Town which would have occurred if I terminated the Contract with Cause or the Town wrongfully terminated the Contract.⁸

Apparently realizing that there would be no unanimity, after the meeting reconvened on September 12, 2012, Orgeron moved to remove item 1 from the agenda while displaying his anger that I notified the public, or maybe it was that another council person became aware as a result of this public disclosure, that six votes would be required to pass the ordinance immediately. The motion was seconded and passed. The Council went into executive session, again violating town code by excluding me there from and, initially, refused to record the session so that the Attorney General would have a complete record. Ultimately, the session was recorded, but only after what I was told was reported to the Attorney General as an open meeting violation, the precise nature of which I can only guess. The Council then went back into open session and, entering into a contract that I had not reviewed or approved for form or authority, as required by town code,⁹ hired Laura Bruno to fill the same position already filled by Alexandra Taft without any legal authority to hire two people to do the same job without terminating the employment of the other first.

Following the hiring of Laura Bruno, I departed from the Council Chambers in reliance on the letter from Personnel Officer and Assistant Town Manager Albert Johnson and because it was my sincere belief that everything occurring thereafter was illegal and began to remove my personal property from my office. The equipment necessary to do the job of Town Manager remained. What I removed was a personally-owned computer monitor, a label printer, some smaller peripherals and personal books, cups, mugs, trinkets and art.

At the adjournment of the September 12, 2012 meeting, Mr. Johnson, who along with myself had been appointed by the Town Manager the additional task of being a building security officer and who had never met Ms. Bruno, saw Ms. Bruno enter into the restricted area of Town Hall and

⁸ If the Town terminated the contract without cause, I would be paid out accrued sick leave at a rate of 1/8000th of my annual salary, whereas, if I terminate the contract with cause, I would be paid out accrued sick leave at 1/2000th of my annual salary and, if I am wrongfully terminated the Town could face seven to eight digit damages.

⁹ Section 3-2-5(A).

proceed to Alexandra Taft's office. Mr. Johnson stopped Ms. Bruno and said she wasn't supposed to be in this part of the building. Once Ms. Bruno identified herself, Mr. Johnson stepped out of her way and was, immediately thereafter, placed on "administrative leave"¹⁰ without giving him a reason why. Ms. Bruno also ordered Mr. Johnson to collect his property and leave the premises. For the remainder of the time that Mr. Johnson was at Town Hall that day, acting chief of police, Sergeant James Schultz shadowed Mr. Johnson's every move. To any objective observer, it was apparent that Mr. Johnson would never be returning to his duties.

A short time later, Ms. Bruno called for a staff meeting which was conducted in a room immediately outside the door to my office. Although I didn't attend the meeting, the door to my office was open and I could easily hear what was being said. Ms. Bruno advised the staff that she demanded their respect and that she would respect them in turn. Ms. Bruno went on to say that, although she was aware of the reputations of many town employees, she would make her own conclusions about what would happen to those employees and wasn't there to be an "ax man." An employee then asked Ms. Bruno, if what Ms. Bruno was saying were true, why did Ms. Bruno immediately put Mr. Johnson on Administrative Leave? Ms. Bruno said words to the effect of, "I don't like your tone, young lady. I know a lot more than you do." Not surprisingly, no one asked a question of Ms. Bruno after that exchange.

A short time after that meeting broke up, Ms. Bruno came into my office to introduce herself to me. I told her that Mr. Johnson had already terminated my employment and I was getting my personal items. She then told me to expect Mr. Johnson's order to be rescinded. I then said, "good luck with that," and she left my office. I had to leave my office to get more boxes and to get my pickup to move my personal items. When I returned, former acting Town Manager and still Town Clerk, Terry Frausto, accompanied by her husband, a sergeant with the police department then went about watching me finish retrieving my personal items. Sergeant Frausto watched me the entire time I was collecting my personal items and I was asked for my keys by Police Evidence Technician Tim Rider.

On September 13, 2012, a police officer arrived at my residence with a letter purporting, contrarily, that Mr. Johnson didn't have the authority to terminate my employment and rescinding that order. Strangely, the keys to my office were not included with this letter. To this date I have yet to receive the keys to my office that I left with Tim Rider on September 12, 2012.

I had been feeling extremely stressed about the conduct and misconduct of the Common Council beginning in March 2012. I am a combat veteran with a 50% disability which, in part, relates to the lingering effects of Post-Traumatic Disorder. I went to see my physician on September 13, 2012, before I received the notice of rescission to seek relief from the symptoms of stress. He wrote a prescription that said I could not work until October 3, 2012. I provided a copy of this prescription to Bruno on the 13th or 14th of September, 2012.

¹⁰ See fn 2.

At some point between the 14th of September, 2012 and September 18, 2012, the Town also changed the password to my work email, making it impossible for me to even do what work I was capable of doing while on sick leave.¹¹

On September 27, 2012, I saw my physician again. He decided that, at this point, I was well enough to work, but not well enough to endure what I had come to perceive as a toxic environment at Town Hall. He wrote a prescription stating that I may work from home at my own schedule and should be communicated with only in writing.

On September 28, 2012, I sent a letter to Bruno requesting reasonable accommodations for my exacerbated PTSD symptoms. On October 3, 2012, I received an email from Town Clerk Terry Frausto with a letter from Bruno attached. It was a remarkably vague request for additional information with a deadline of October 10, 2012. I sent what information I could get online from the Veterans Benefits Administration showing that I have a federal hiring preference and am 50% disabled. I requested guidance as to what else was needed.

On October 9, 2012, one day before the date Bruno set for me to respond by, Bruno had a town employee, it may have been a police officer, deliver a letter describing for the first time what she was asking for with some specificity. My physician and I drafted a letter which he signed and I delivered to Town Hall on October 10, 2012.

On October 12, 2012, Bruno sent a follow up letter asking me repetitive questions for which the answers seemed self-evident and asking my doctor a group of questions only a prescient person could provide answers to. The letter was sent using a mail slot other than the one for local mail, because the letter was routed through Phoenix rather than just being placed in my box there at the post office. This delayed my receipt of the letter until October 15, 2012 with a deadline to respond by October 19, 2012.

Both my physician and I answered the questions presented to the best of our abilities. The Town never responded to my request and is currently being investigated by the United State Equal Employment Opportunity Commission for violating my rights under the Americans with Disabilities Act and my First Amendment Right to religious freedom.

On October 23, 2012, I received an email from Bruno advising me that the Common Council would be discussing my employment in executive session on October 24, 2012 and that I was expected to appear to respond to whatever unknown allegations they may have raised. This was less than 24 hours before the proposed hearing.

On October 24, 2012, I again saw my local physician to see if I was well enough, in his opinion, to attend a meeting which would discuss allegations of deficient performance without the slightest hint of what the subject(s) of discussion would be. Dr. Franklin ordered me to go to the emergency room for an immediate psych evaluation as I had exceeded his ability to be of assistance.

¹¹ I had responded to emails from Jackson|Lewis, AMRRP and OMLET before my access to the email account was terminated.

Not being able to afford the \$250 co-pay for the local emergency room and suspecting that I would either be given medication which would prevent me from driving or be admitted as a patient of the VA Hospital in Prescott, I sent an email to Bruno explaining that I was not well enough to attend the scheduled ambush and that I did not believe that my presence would affect the outcome of the hearing. My wife, who also had a pre-termination hearing on October 24, 2012, also sent an email responding to the allegations against her in writing and explaining that she needed to drive me to the hospital.

On October 26, 2012, I received a voicemail from Bruno telling me that my contract was being terminated with cause. On October 30, 2012, Bruno followed up with a letter, received by me on November 1, 2012, which is as devoid of detail concerning the reasons my contract is being terminated with cause as was her notice which was mailed on October 22, 2012 and which I received on October 24, 2012 regarding the October 24 meeting.

Termination Of A Contract In Retaliation For Bringing Matters Of Public Importance Involving A Violation Of Any Law, Mismanagement, A Gross Waste Of Monies Or An Abuse Of Authority Is A Prohibited Personnel Action Pursuant To A.R.S. § 38-531 Et Seq.

A. Prior Disclosure Of Public Importance Involving A Violation Of Any Law, Mismanagement, A Gross Waste Of Monies Or An Abuse Of Authority By Complainant

Prior to being terminated I made multiple complaints to the Arizona Solicitor General's Open Meeting Law Enforcement Team. I do not have the precise dates that I made these complaints because I no longer have access to the email account from which the complaints were made. I am certain that I complained about the meetings of August 25th, August 28th and September 11th meeting immediately before those meetings were held. I also hand-delivered the recordings of the September 11th and September 12th executive sessions to ensure that OMLET had the recordings before they could be destroyed. Subsequent to being locked out of my office and, I believe, being cut off from email, I emailed Assistant Attorney General Christopher Munns on September 18, 2012 concerning an open meeting law violations I believed may have occurred on August 28, September 11 and September 12; on September 25, 2012, concerning the meeting on the 25th and noting what appeared to be evidence of Open Meeting Law (OML) violations occurring between September 12 and September 25, 2012; on October 1, 2012, concerning a meeting held on a Monday held in direct violation of OML and my written instruction to the Council concerning Monday meetings; on October 23, concerning a lack of actual personal notice of an executive session to illegally discuss my employment. I also met personally with Mr. Munns on October 17 and provided documentary evidence of the allegations contained in the emails between August 1 and September 30, 2012.

On October 9 and 16, 2012, I reported the Town for employing an unlicensed private investigator to engage in conduct defined by law as private investigation.

On October 22, 2012, I met with the United States Equal Employment Opportunity office to lodge a complaint about discrimination and retaliation based on requests for reasonable accommodations under the Americans with Disabilities Act and violations of my First

Amendment Rights to religious freedom. I also reported the Town Council's and Town Administration's misconduct to the Arizona Attorney General's Civil Rights Division.

B. Prohibited Personnel Practice

On October 23, 2012, less than 24 hours before an executive session, I was notified that I was to appear and defend undefined charges against me. I responded that my doctor had not cleared me to attend such a meeting and, in fact, had ordered me to go to the emergency room for an psychological evaluation as soon as practicable on October 24, 2012. This meeting violated my contract rights because my contract makes the Town Council my appellate authority. On October 26, 2012, I received a voicemail advising me that my contract was being terminated with cause. Among the reasons given in the letter I received on November 1, 2012, was that I had abandoned my job (I attempted to work from home and obtain reasonable accommodation, a request which was neither granted nor denied); and that I violated ER 1.7 of the Arizona Supreme Court's Rules of Professional Conduct which may, the charge is so vague that I cannot be certain, involve complaining to the Attorney General when the Council and Administration ignored my legal advice and broke or sought to break the law (an action I believe to be justified by ER 1.13).

Request for Relief

- 1) That the State Personnel Board enjoins the Town of Quartzsite from terminating me with cause.
- 2) That the State Personnel Board orders the Town of Quartzsite to change the termination to a without cause termination and pay the severance owed as a result thereof.
- 3) That the State Personnel Board orders Laura Bruno to pay a civil penalty of up to five thousand dollars to the Town of Quartzsite general fund to be paid by Laura Bruno, not the Town of Quartzsite.
- 4) That the State Personnel Board finds that Laura Bruno committed a prohibited personnel practice against Complainant, who disclosed information that Complainant reasonably believed evidenced a violation of any law.
- 5) That the State Personnel Board orders Laura Bruno to pay a civil penalty of up to ten thousand dollars.
- 6) That the State Personnel Board orders the Town of Quartzsite to dismiss Laura Bruno.
- 7) That the State Personnel Board bars Laura Bruno from any future employment by the Town of Quartzsite.

The foregoing is true to the best of my knowledge and on information and belief.

Respectfully submitted November 4, 2012.


Martin Branman
Complainant