

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

ROBERT G. BANE,)	
)	
Plaintiff,)	
)	
-vs-)	No.: 2:18-cv-2013
)	
CITY OF PAXTON, a Municipal Corporation)	
in Ford County, Illinois; ERIC EVANS;)	
LINDA GLAD; SUSAN SATTERLEE;)	
H.J. FLESNER; WILLIAM WYLIE;)	
ROBERT PACEY; ROBERT STEIGER;)	
MICHAEL WILSON; and)	
MAYOR J. WILLIAM INGOLD,)	
)	JURY TRIAL
Defendants.)	DEMANDED

COMPLAINT

NOW COMES Plaintiff, Robert G. Bane, by and through his attorney of record, Ronald S. Langacker of Langacker Law, Ltd., and for his Complaint against Defendants, the City of Paxton, a municipal corporation in Ford County, Illinois; Eric Evans; Linda Glad; Susan Satterlee; H.J. Flesner; William Wylie; Robert Pacey; Robert Steiger; Michael Wilson, and Mayor J. William Ingold, in their personal and official capacities, hereby states as follows:

JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to the terms of Title 28, United States Code, Sections 1331 and 1337, together with Title 42, United States Code, Sections 1983 and 1988. Specifically, this is an action brought in furtherance of a certain Act of Congress which guarantees to citizens of the United States protections against the acts of public officers which infringe upon their rights under the Constitution of the United States.

2. The venue of this Court to entertain the issues raised in this case is appropriate by virtue of Title 28, United States Code, Section 1391(b), since the Defendants engaged in their official activities within the judicial district of this Court and the claims giving rise to the above-captioned proceeding did occur within the judicial district of this Court.

PARTIES

3. Plaintiff, Officer Robert G. Bane (“Officer Bane”) was, at all relevant times, the Chief of Police and a full-time public employee of the Defendant, the City of Paxton, and currently resides within this judicial district.

4. Defendant, the City of Paxton (“City”), is a municipal corporation organized and existing under the laws of the State of Illinois. The City is located in within the judicial district in Ford County, Illinois.

5. At all times relevant herein, the Paxton City Council consists of eight (8) members who are elected from time to time in accordance with the Illinois Election Code.

6. Defendant, Eric Evans, is an adult resident of the State of Illinois. At all times material to this action, Mr. Evans served as a member of the City Council in Paxton, Illinois. He is named in this proceeding both in his individual and, for the purpose implementing equitable relief, his official capacity.

7. Defendant, Linda Glad, is an adult resident of the State of Illinois. At all times material to this action, Ms. Glad served as a member of the City Council in Paxton, Illinois. She is named in this proceeding both in her individual and, for the purpose implementing equitable relief, her official capacity.

8. Defendant, Susan Satterlee, is an adult resident of the State of Illinois. At all times material to this action, Ms. Satterlee served as a member of the City Council in Paxton, Illinois.

She is named in this proceeding both in her individual and, for the purpose implementing equitable relief, her official capacity.

9. Defendant, H.J. Flesner, is an adult resident of the State of Illinois. At all times material to this action, Mr. Flesner served as a member of the City Council in Paxton, Illinois. He is named in this proceeding both in his individual and, for the purpose implementing equitable relief, his official capacity.

10. Defendant, William Wylie, is an adult resident of the State of Illinois. At all times material to this action, Mr. Wylie served as a member of the City Council in Paxton, Illinois. He is named in this proceeding both in his individual and, for the purpose implementing equitable relief, his official capacity.

11. Defendant, Robert Pacey, is an adult resident of the State of Illinois. At all times material to this action, Mr. Pacey served as a member of the City Council in Paxton, Illinois. He is named in this proceeding both in his individual and, for the purpose implementing equitable relief, his official capacity.

12. Defendant, Robert Steiger, is an adult resident of the State of Illinois. At all times material to this action, Mr. Steiger served as a member of the City Council in Paxton, Illinois. He is named in this proceeding both in his individual and, for the purpose implementing equitable relief, his official capacity.

13. Defendant, Michael Wilson, is an adult resident of the State of Illinois. At all times material to this action, Mr. Wilson served as a member of the City Council in Paxton, Illinois. He is named in this proceeding both in his individual and, for the purpose implementing equitable relief, his official capacity.

14. Defendant, J. William Ingold, was, at all times relevant herein, the Mayor of the City of Paxton. Mr. Ingold is named in this proceeding both in his individual and, for the purpose of implementing equitable relief, his official capacity.

ALLEGATIONS COMMON TO ALL COUNTS

15. Officer Bane has had a long and distinguished law enforcement career which has spanned over four (4) decades. Officer Bane began his employment with the City of Paxton in 1986 and served as the Paxton Chief of Police since 2006. As an employee, Officer Bane met and exceeded the expectations of the City of Paxton throughout his employment.

16. Pursuant to Paxton City Ordinance § 33.07 entitled Personnel Rules for Employees, employees can only be terminated for just cause by the department head or the mayor with the consent of the appropriate committee of the City Council. Further, and pursuant to the municipal ordinance, an employee who is dismissed shall be given written notice of the reasons of the action, copies of which shall be forwarded to the Mayor and City Clerk.

17. The Mayor of Paxton, J. William Ingold, exercises general supervision over all police officers with the City of Paxton, Illinois.

18. On or about August of 2015, Officer Bane filed a wage and hour claim against the City of Paxton through the Illinois Department of Labor in cause 15-A00647 in which he argued that the City failed pay compensation for overtime Officer Bane had earned from May 2006 until August of 2015.

19. On August 26, 2016, the Illinois Department of Labor determined that the City of Paxton was not in compliance with the Illinois Minimum Wage Law, 820 ILCS 105/1-15.

20. As the issues of the wage and hour claim remained unresolved following the Illinois Department of Labor's investigation, Officer Bane filed cause 2016-SC-101 in Ford County,

Illinois, wherein he stated that the City of Paxton continued to owe him unpaid overtime wages pursuant to federal and state law.

21. Subsequent to filing the cause of action in 2016-SC-101, Officer Bane requested information related to his overtime claim from the City of Paxton pursuant to the Freedom of Information Act, 5 ILCS 140/1 et seq., in October and November of 2016. Officer Bane was within his rights to request this information and at the time no concerns were raised by the Mayor or anyone else with the City regarding these specific requests.

22. On June 21, 2017, the Ford County Circuit Court ruled in favor of Officer Bane in 2016-SC-101 and ordered the City to reimburse Officer Bane a portion of his unpaid overtime wages.

23. On July 7, 2017, Officer Bane filed a *Motion to Reconsider* in cause 2016-SC-101 and argued in part that the Court did not consider the provisions of the Fair Labor Standards Act, (“FLSA”) 29 U.S.C.A 201 *et seq.*, which required payment of additional damages equal to the amount of the unpaid wages. That motion was subsequently denied by the Court.

24. As part of his job duties as Chief of Police, Officer Bane was tasked with conducting performance evaluations for the police officers under his supervision.

25. In April of 2017, Alderman Wylie requested that Office Bane provide him with copies of the officer’s performance evaluations. Officer Bane was hesitant to provide the evaluations to the Alderman because the evaluations contained the officers’ personal and confidential information, and releasing the evaluations to a third party could result in a breach of privacy. Officer Bane was further concerned about the potential conflict of interest with a city alderman having access to confidential evaluations, as well as potential conflicts with the Mayor, to whom the Plaintiff directly reported.

26. In July of 2017, Alderman Wylie again requested copies of the evaluations for Officer Bane's employees. Again, Officer Bane raised concerns about provide copies of the evaluations, citing the need to protect the privacy of his officers. See Exhibit A, attached hereto.

27. On August 18, 2017, the Mayor drafted a letter to Officer Bane demanding that he provide copies of the performance evaluations for the police officers to Alderman Wylie and Alderman Wilson. See Exhibit B, attached hereto.

28. Following this request, Officer Bane contacted David Nixon of the Illinois Fraternal Organization of Police ("FOP") Labor Council, and requested guidance on how to handle the directive. Mr. Nixon stated that to provide a police officer's confidential employee evaluation to a third party could present a violation of state law and directly contacted the City in an effort to resolve the issue.

29. On August 21, 2017—three days after the August 18, 2017 letter from the Mayor and after the City and the Illinois FOP Labor Council mutually resolved their concerns regarding the release of confidential information, Officer Bane provided copies of the officer's evaluations to both the Mayor and the Alderman, thereby fully complying with the Alderman's request.

30. Eight days later, on August 29, 2017, Officer Bane was abruptly terminated from his employment as Police Chief by the Mayor. Office Bane was not given any reason for his termination, nor was he provided with notice of his termination, a statement of the charges against him, or an opportunity to be heard prior to his termination.

31. Following his termination, Officer Bane did not receive a post-termination hearing as required by the Fourteenth Amendment to the United States Constitution.

32. Immediately following his termination, Officer Bane made numerous requests to the City via his counsel for an explanation of his termination. However, no response was provided to this request for over two weeks.

33. The City did not respond to Officer Bane's counsel until September 13, 2017, in the form of a letter from the City Attorney. The correspondence claimed that a reason for Officer Bane's termination was that he had "utilized the fax machine at the Police Department to submit a Freedom of Information Act Request to the City requesting information supporting his small claims action against the City," referring to Officer Bane's FOIA requests from 2016. The correspondence further characterized Officer Bane's request for information to assist in his lawsuit seeking reimbursement for years of unpaid overtime compensation from the City as a means to "advance his own personal gain."

34. The September 13, 2017 correspondence further claimed that Office Bane had failed to comply with the directive to complete the previously referenced employee evaluations—though the letter acknowledged that the evaluations had in fact been completed later in the same paragraph—and there was no reference to the concerns regarding the privacy and confidentiality which had been addressed by the Illinois FOP Labor Council.

35. On September 4, 2017, the *Ford County Record* submitted a FOIA request to the City wherein they requested, "a copy of the notice of termination of Police Chief Robert Bane's employment, copies of all complaints made against Bane in the term of his employment as police chief, any correspondence between Mayor William Ingold and aldermen/departments heads related to the termination of the police chief's employment and/or complaints made against Bane, including any emails or letters sent between those parties." See Exhibit C, attached hereto.

36. The City responded to the FOIA request on September 14, 2017 by stating there was “no written notice of termination of Police Chief Officer Bane’s employment,” and that there was “no written record of any complains made against Mr. Bane during his employment as Police Chief.” The FOIA response specifically noted that such documentation “does not exist.” See Exhibit D, attached hereto. However, the city provided a copy of the August 18, 2017 correspondence from the Mayor to Officer Bane to the press, which was later published. See Exhibit E, attached hereto.

37. At the October 26, 2017 City Council Meeting, the City Council adopted a Resolution in support of Officer Bane’s August 29, 2017 termination by the Mayor, J. William Ingold.

38. On January 9, 2018, the Paxton City Council formally approved the Mayor’s appointment of Officer Coy Cornett as the City’s permanent Chief of Police.

COUNT I
**(Deprivation of Property Interest—Violation of the
Fourteenth Amendment to the U.S. Constitution)**

39. The Plaintiff repeats and re-alleges all of the paragraphs in this Complaint as if fully set forth herein.

40. The Fourteenth Amendment to the United States Constitution provides for a right of procedural due process and prohibits the deprivation of property and liberty without due process.

41. Plaintiff was, at all relevant times, an employee of the City of Paxton.

42. Plaintiff had a protectable property interest in his continued employment as the Chief of Police of the City of Paxton within the meaning of the Fourteenth Amendment to the United States Constitution 42 U.S. § 1983.

43. Plaintiff was entitled to receive a due process pre-termination hearing in compliance with the Constitution of the United States, U.S. Const. Amend XIV § 1.

44. Plaintiff's right to receive a fair termination hearing was denied due to Plaintiff not receiving adequate notice of the charges against him, not receiving a fair opportunity to be heard, and not receiving the opportunity to present evidence, call witnesses, or otherwise testify on his own behalf.

45. The Defendants' actions were taken under color of law and deprived Plaintiff of a protective property interest in his employment as the Chief of Police of the City of Paxton without affording him due process rights to a fair and impartial pre-termination hearing, in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C.A § 1983.

46. The individual Defendants, acting in their personal capacities, willfully and maliciously, or with reckless indifference, deprived Plaintiff of his constitutionally-protected property rights in his continued employment with the City of Paxton.

47. That as a direct and proximate result of the Defendants' foregoing conduct, the Plaintiff sustained the loss of certain economic benefits derived through his position with the City, as well as his subsequent inability to secure employment. Additionally, the Plaintiff has suffered emotional pain and anguish, damage to his reputation, embarrassment, humiliation, inconvenience, and the loss of enjoyment of life.

COUNT II
(Deprivation of Liberty Interest—Violation of the
Fourteenth Amendment to the U.S. Constitution)

48. The Plaintiff repeats and re-alleges all of the paragraphs in this Complaint as if fully set forth herein.

49. That as a result of the Plaintiff's abrupt termination, statements significantly derogatory toward the Plaintiff were made by Defendants, including but not limited to

allegations of insubordination, misconduct, violation of City rules and regulations, etc. Such comments were made to the media by the Defendants.

50. That the City Council and the other Defendants, both individually and on behalf of the city Council, knowingly made the allegations against Plaintiff public.

51. Plaintiff was stigmatized by the untrue statements made against him and he was stigmatized in a manner that damaged his professional reputation by hurting his good name, personal reputation, honor, and integrity.

52. Plaintiff suffered a tangible loss of other employment opportunities as a result of the public disclosure.

53. By their actions, the Defendants deprived Plaintiff of his liberty interests without due process of law, in violation of the Fourteenth Amendment of the United States Constitution.

54. That as a direct and proximate result of the foregoing conduct, the Plaintiff sustained the loss of certain economic benefits derived through his position of employment as well as his subsequent inability to secure employment. Additionally, the Plaintiff has suffered emotional pain and anguish, damage to his reputation, embarrassment, humiliation, inconvenience, and the loss of enjoyment of life.

COUNT III

(Retaliatory Discharge—Violation of the Illinois Wage and Hour Act, 820 ILCS 115/14(c))

55. Plaintiff repeats and re-alleges all of the paragraphs in this Complaint as if fully set forth herein.

56. At all relevant times, there was in full force and effect a statute entitled the Illinois Wage Payment and Collection Act (“IWPCA”), 820 ILCS 115/1 *et seq.* The IWPCA prohibits an employer from retaliating against an employee for complaining to the employer about unpaid wages. 820 ILCS 115/14(c).

57. Plaintiff was an employee of the Defendant within the meaning of the IWPCA.

58. Plaintiff asserted his rights under the IWPCA by reporting and protesting that he had not be paid all of his earned compensation.

59. Plaintiff was discharged on August 29, 2017, in retaliation for reporting a violation of the IWPCA, and further for filing a cause of action under the IWPCA, wherein Plaintiff complained of conduct by the City he that believed to be wrongful and illegal.

60. The Illinois Wage Payment and Collection Act provides for criminal penalties for those who willfully violate the Act, § 115/14(a)(2).

61. By discharging Plaintiff for asserting his legal rights under the IWPCA, said discharge violates a clear mandate of public policy.

62. In discharging Plaintiff for exercising his legal rights, the City of Paxton acted with malice and in reckless disregard of the law, and with the intent to chill Plaintiff and other employee's rights under the IWPCA.

63. As a result of the retaliatory discharge by the City of Paxton, the Plaintiff has suffered loss of wages, loss of other employment benefits, loss of employment, emotional distress, loss of job opportunities, and was otherwise damaged.

COUNT IV
(Retaliatory Discharge—Violation of Fair Labor Standards Act)

64. Plaintiff repeats and re-alleges all of the paragraphs in this Complaint as if fully set forth herein.

65. Under the Fair Labor Standards Act ("FLSA"), 29 U.S.C.A. § 215(a)(3), it is unlawful for any person to discharge or discriminate against any employee for filing any complaint or instituting any proceeding under or related to the Act.

66. The anti-retaliation provision of the FLSA has been construed broadly so as to provide a claim even though employee did not engage in one of the expressly named activities. Fair Labor Standards Act of 1938, § 15(a)(3), 29 U.S.C.A. § 215(a)(3).

67. Plaintiff asserted his rights as protected by the FLSA by claiming that he had not be paid all of his earned overtime compensation.

68. Plaintiff was discharged on August 29, 2017, in retaliation for filing a cause of action under the FLSA wherein Plaintiff complained of conduct by the City he that believed to be wrongful and illegal.

69. By discharging Plaintiff for asserting his legal rights under the FLSA, said discharge violates a clear mandate of public policy.

70. In discharging Plaintiff for exercising his legal rights, the City of Paxton acted with malice and in reckless disregard of the law, and with the intent to chill Plaintiff and other employee's rights under the FLSA.

71. As a result of the retaliatory discharge by the City of Paxton, Plaintiff has suffered loss of wages, loss of other employment benefits, loss of employment, emotional distress, loss of job opportunities, and was otherwise damaged.

COUNT V
(Violation of Illinois State Official and Employee Ethics Act, 5 ILCS 430/15-5 *et seq.*)

72. Plaintiff repeats and re-alleges all of the paragraphs in this complaint as if fully set forth herein.

73. The State Officials and Employees Ethics Act, 5 ILCS 430/15-1, prohibits retaliatory action by a State agency or employee against a State employee because he or she 1) disclosed or threatened to disclose to a supervisor or to a public body an activity, policy or practice of any State agency or other State employee that the State employee reasonably believes is in violation

of a law, rule, or regulation; or 2) provides information to any public body conducting an investigation, hearing or inquiry into any violation of law, rule or regulation by any State agency or State employee.

74. Defendants, the City of Paxton, are a State agency within the meaning of 5 ILCS 430/15-5.

75. Pursuant to 5 ILCS 430/15-5 through 15-20, the actions taken against Plaintiff by the City were adverse employment actions in retaliation for Plaintiff's protected activity as described herein. Plaintiff reasonably believed the activities, policies and practices of the City violated laws, rules and regulations. Plaintiff's protected activity was at a minimum a contributing factor that caused such adverse actions to be taken against him.

76. Pursuant to 5 ILCS 430/15-25, Plaintiff is entitled to all remedies necessary to make him whole and prevent future violations of the Act, including, but not limited to: reinstatement to his previous position within the City, as well as reinstatement of full benefits and seniority rights, and reasonable attorney's fees. In order to make him whole, Plaintiff also seeks an award of compensatory damages for the severe emotional distress and humiliation he has had to incur.

77. To prevent future violations of the Act, Plaintiff seeks an award of punitive damages against the Defendants.

COUNT VI
(Violation of the Illinois Whistleblower Act, 740 ILCS 174/1 *et seq.*)

78. Plaintiff repeats and re-alleges all of the paragraphs in this Complaint as if fully set forth herein.

79. As set forth in the preceding paragraphs, Plaintiff engaged in activities for which government employees are protected from retaliation by the Whistleblower Act, 740 ILCS 174/1 *et seq.*

80. By engaging in the adverse conduct described in the preceding paragraphs, Defendants engaged in a pattern of retaliation against Plaintiff in violation of the Illinois Whistleblower Act, 740 ILCS 174/1 *et seq.*

81. Said Defendants' unlawful conduct, as alleged above, caused Plaintiff substantial damages, including but not limited to: loss of employment, loss of past and future income and benefits, loss of earning capacity, emotional distress, loss of reputation, humiliation, and embarrassment. Plaintiff will continue to suffer these damages in the future.

82. Defendants' unlawful conduct was intentional and undertaken with malice and reckless indifference to Plaintiff's rights under the Whistleblower Act, and Plaintiff therefore seeks awards of punitive damages against these defendants in order to deter them and others similarly situated individuals from such wrongful conduct in the future.

COUNT VII
(Conspiracy—Violation of 42 U.S.C.A. § 1983)

83. Plaintiff repeats and re-alleges all of the paragraphs in this Complaint as if fully set forth herein.

84. As described in the preceding paragraphs, Defendants, acting in concert with other known and unknown conspirators, reached an understanding to deprive Plaintiff of his Constitutional rights.

85. Plaintiff was deprived of his Constitutional rights in the manner described in the preceding paragraphs.

86. That in furtherance of the conspiracy, Defendants committed overt acts and were otherwise willful participants in joint activity with state actors under color of law.

87. That the misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

88. As a result of the aforementioned deprivation of federal rights, Plaintiff has suffered loss of employment, loss of wages, loss of other employment benefits, loss of job opportunities, emotional distress, and was otherwise damaged.

COUNT VIII
**(Tortious Interference with Advantageous Business
Relations—Mayor J. William Ingold)**

89. Plaintiff repeats and re-alleges all of the paragraphs in this Complaint as if fully set forth herein.

90. Plaintiff had a legitimate expectation of future economic advantage necessary for the tort of interference.

91. Mayor J. William Ingold interfered with and defeated the Plaintiff's legitimate expectancy of continued employment by terminating Plaintiff without cause and in retaliation as detailed *infra*.

92. That as a result thereof, Plaintiff has suffered loss of employment, loss of wages, loss of employment benefits, loss of job opportunities, emotional distress, and was otherwise damaged.

WHEREFORE, Plaintiff, Robert G. Bane, respectfully requests that this Court enter the following relief:

- A. Award Plaintiff damages sufficient to compensate him for any economic losses suffered as a result of conduct alleged in the Complaint;
- B. Assess against the Defendants all incidental and consequential damages, the costs and expenses incurred by the Plaintiff in maintaining the above-captioned proceedings together with reasonable attorney's fees incurred by the Plaintiff in prosecuting the above-captioned case;

- C. Award against the Defendants and in favor of the Plaintiff such compensatory and exemplary damages as may be permitted by law;
- D. Enter a declaratory judgment determining that the actions complained of in this Complaint are unlawful and in violation of the provisions of 42 U.S.C.A § 1983 and issue a mandatory injunction against the Defendants to refrain from engaging in any actions with respect to the Plaintiff which are prohibited under the terms of the foregoing laws;
- E. Issue a mandatory injunction directing the Defendants to reinstate the Plaintiff to the position of employment which he held prior to the conduct complained of in this Complaint with all employment duties, responsibilities, salaries, benefits and rights attendant to that position;
- F. Awarding reasonable attorney's fees and costs incurred in filing this action, in accordance with 820 Ill. Comp. Stat. § 115/14(c); and
- F. Award punitive damages against the individual Defendants, Eric Evans, Linda Glad, Susan Satterlee, H.J. Flesner, William Wylie, Robert Pacey, Robert Steiger, Michael Wilson and Mayor J. William Ingold, in their individual capacities;
- G. For all further relief the court deems equitable and just.

PLAINTIFF DEMANDS TRIAL BY JURY.

ROBERT G. BANE, PLAINTIFF

By: /s/Ronald S. Langacker
Ronald S. Langacker
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