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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



CHARLES KENDRICK,

Plaintiff,

v.

CITY OF EAST POINT, GEORGIA,

Defendant.

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CIVIL ACTION
FILE NO. 2012CV219721

FINAL ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

The above-captioned matter is before the Court on the Motion for Summary Judgment of Defendant City of East Point, Georgia (the "City"), seeking judgment as a matter of law on Plaintiff Charles Kendrick's ("Plaintiff") claims against the City in this action. Now, having considered the City's Motion for Summary Judgment, Plaintiff's Response in opposition thereto, the City's Reply, the other pleadings of record, and applicable Georgia law, the Court herein finds as follows:

I. FACTUAL BACKGROUND

After consideration of the record evidence, including affidavit testimony and accompanying exhibits properly before the Court, the undisputed material facts, construed in a light most favorable Plaintiff as the non-moving party, are as follows:

In 2008, the City had a budget deficit of more than \$5,000,000.00. In order to address a portion of the City's budget shortfall, the City Manager, Crandall Jones (the "City Manager"), determined that substantial cuts needed to be made in the City's Fire Department (the "Fire Department"). The City Manager proposed cuts that included, but were not limited to, a substantial reduction in force within the Fire Department and the closing of certain of the City's

fire stations. The East Point City Council approved the closure of two fire stations, and the City laid-off forty-nine (49) fire personnel, including Plaintiff, in June 2008. These layoffs were governed by Section 4-1060 of the City's Code of Ordinance, located in Division II, Article C of the Code ("Personnel Code"). The Personnel Code is found in Sections 4-1021 through 4-1092 of the City's Code of Ordinance.

Pursuant to City Section 4-1060, entitled "Layoff" (the "layoff ordinance"):

The city manager may identify numbers of positions by job title to be vacated which will result in the layoff of an employee in the classified service when he deemed it necessary because of shortage of funds or work, or other material changes in the duties or organization or for related reasons which do not reflect discredit upon the service of the employee. When any positions so vacated are refilled within a period of two (2) years following a layoff, the persons removed therefrom, if available and able to efficiently perform the duties of such positions, shall be first entitled to be restored to the position. The layoff of employees shall be made in reverse order, on the basis of length of service in the job title.

As elucidated above, the layoff ordinance requires the City to conduct layoffs based upon seniority in "job title." All individuals employed by the City are given a job title, and every job title/position has a corresponding four-digit number known as the "position number," "job title code," and/or "class" (hereinafter collectively "job title code").¹ In the Personnel Code, the term "job title" is synonymous with the terms "position" and "class title."² Additionally and strictly within the City's Fire and Police Departments, employees are also given a "rank," but this rank has no bearing on the application of the layoff ordinance, except to the extent specific job titles exist within the rank.

¹ The employee's job title code is used on all personnel records and transactions, including Personnel Action forms.

² The City's classification plan, found in Section 4-1027 of the Personnel Code, provides that the "classification plan" is the "systematic grouping of positions into appropriate classes." "Position" is defined by this Section as "a group of current assigned duties and responsibilities requiring the full or part time employment of one person." A "class" is defined as "a group of positions (or one position) that: a. [h]as similar duties and responsibilities; b. [r]equires like qualifications; and c. [c]an be equitably compensated by the same range of pay." This Section defines "class title" as "the official designation or name of the class, and it shall be used on all personnel records and transactions."

In June 2008, the City's Human Resource Department administered the reduction in force utilizing employees' job titles, and the layoffs were conducted based on an employee's length of service in the respective job title as required by the layoff ordinance.

During all times pertinent to this litigation, the Fire Department was primarily comprised of two divisions – Administration and Operations. Administration handled the administrative or “office” side of the Fire Department, including the Fire Chief and her staff, while Operations engaged in emergency response activities, such as fighting fires or responding to medical emergencies. The ranks within the Operations division, in order of increasing authority, were Firefighter, Fire Apparatus Operator (“FAO”), Lieutenant, Captain, Battalion Chief, and Deputy Chief. Within those ranks, some of the possible job titles were: (1) rank title only; (2) rank title with an Emergency Medical Technician (“EMT”) certificate; (3) rank title with a Paramedic certificate; and (4) rank title with administrative job duties and title.

Because the majority of the Fire Department's emergency calls were medical in nature, the City required all fire personnel in the Operations Division, with the exception of those in the entry-level rank of Firefighter, to have an EMT certificate. In addition, fire personnel in the Operations division were encouraged to obtain Paramedic certification. Fire personnel with EMT certification were given an elevated job title and paid on a higher scale than other personnel in the same rank who did not possess the certification. Likewise, fire personnel with a Paramedic certification held a further elevated job title and were paid 5% more than EMTs in the same rank.

At the time of the June 2008 reduction in force, Plaintiff was employed by the Fire Department in the Operations division and held the rank of Lieutenant. Two job titles/positions existed within the rank of Lieutenant in the Operations division: (1) “Lieutenant” (all of whom had EMT certification, but not Paramedic certification); and (2) “Lieutenant/Paramedic” (all of

whom had EMT *and* Paramedic certification). The job title code for Lieutenant was 6903, and the job title code for Lieutenant/Paramedic was 6907.³

When Plaintiff was laid off by the City, Plaintiff's job title was "Lieutenant" (i.e. non-Paramedic Lieutenant), job title code 6903. At that time, there were eighteen (18) Lieutenants (by rank) in the Operations Division, serving in the two job titles. Specifically, there were five (5) Lieutenant/Paramedics and thirteen (13) non-Paramedic Lieutenants. In instituting the reduction in force and in order for the City to maintain its staffing needs and an appropriate level of emergency medical services, the City laid off one (1) Lieutenant/Paramedic and five (5) non-Paramedic Lieutenants. Thus, following the reduction in force, the City retained twelve (12) employees who held the rank of Lieutenant – four (4) Lieutenant/Paramedics and eight (8) non-Paramedic Lieutenants.⁴

Because Plaintiff held the job title of Lieutenant (as opposed to Lieutenant/Paramedic), the City evaluated Plaintiff's length of service in his job in relation to the twelve (12) other non-Paramedic Lieutenants for purposes of administering the reduction in force. Plaintiff had less time in service than the eight (8) non-Paramedic Lieutenants who were retained by the City.

On August 9, 2012, Plaintiff filed his Renewed Complaint⁵ ("Complaint") against the City in this Court, seeking: (1) money damages for the City's purported breach of contract in discharging Plaintiff and retaining employees with less length of service in Plaintiff's job title/position; and (2) declaratory judgment and injunctive relief related to the City's purportedly unlawful acts in contravention of the City's layoff ordinance. The City answered Plaintiff's

³ Other ranks within the Operations division of the Fire Department also contained multiple job titles. For example, within the rank of "Firefighter," three job titles existed: (1) Firefighter (job title code 6203); (2) Firefighter/EMT (job title code 6305); and (3) Firefighter/Paramedic (job title code 6510). Similarly, within the rank of "FAO," two job titles existed: (1) FAO/EMT (job title code 6607); and (2) FAO/Paramedic (job title code 6702).

⁴ Following the layoff, the City also retained two (2) FAO/Paramedics and two (2) Firefighter/Paramedics.

⁵ Plaintiff filed a prior lawsuit in this Court in June 2010, which he voluntarily dismissed in February 2012.

Complaint, denying the relief sought, and after conducting discovery, filed the Motion for Summary Judgment presently before the Court.

In his Complaint and in response to the City's Motion for Summary Judgment, Plaintiff alleges that on June 30, 2008, he received notice from the City that he was being laid off as part of a reduction in force. Plaintiff claims that despite the City's allegations to the contrary, only *one* job title exists within the rank of Lieutenant – the job title of “Fire Lieutenant” – and that the City wrongfully asserts that two separate job titles – i.e. non-Paramedic “Lieutenant” and “Lieutenant/Paramedic” – exist within the rank of Lieutenant. Plaintiff alleges that when he was discharged by the City, the City unlawfully retained persons with less service in the job title of “Fire Lieutenant” than Plaintiff and that such was a violation of the express provision set forth in Section 4-1060 of the Personnel Code that “layoff of employees shall be made in inverse order, on the basis of length of service in job title.”

In furtherance of his claims, Plaintiff seeks the following monetary and injunctive relief from this Court: (1) restoration of the status quo, including restoration of all seniority and benefits lost; (2) a directive to the City that Plaintiff be allowed to buy back into the City's pension plan; (3) money damages, including back pay, lost value of benefits, and out-of-pocket medical expenses, plus interest; (4) a declaration that the City's actions were unlawful and should be set aside; and (5) enjoinder of further unlawful acts by the City, to include discharging employees on any basis other than that set out in Section 4-1060 of the Personnel Code.

In response to Plaintiff's Complaint and in support of its Motion for Summary Judgment, the City claims that in 2008, it properly discharged Plaintiff pursuant to the layoff ordinance based upon Plaintiff's length of service in the job title of non-Paramedic Lieutenant. The City further asserts that Plaintiff's claims in this action derive from Plaintiff's confusion between

“rank” and “job title” – a nuance that only exists in the City’s Police and Fire Departments. The City asserts that Plaintiff’s job title is what is dispositive in this case, that no dispute exists as to any material fact, and that Plaintiff’s claims should be dismissed as a matter of law.

II. STANDARD OF LAW

Pursuant to O.C.G.A. Section 9-11-56, for a party to prevail on a Motion for Summary Judgment, the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, must show that there is no genuine issue as to any material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. O.C.G.A. § 9-11-56(c); *see also* Creeden v. Fuentes, 296 Ga. App. 96 (2009).

The standard for summary judgment is familiar and settled: Summary judgment is warranted when any material fact is undisputed, as shown by the pleadings and record evidence, and this fact entitles the moving party to judgment as a matter of law. So, to prevail on a motion for summary judgment, the moving party must show that there is no genuine dispute as to a specific material fact and that this specific fact is enough, regardless of any other facts in the case, to entitle the moving party to judgment as a matter of law. When a defendant moves for summary judgment as to an element of the case for which the plaintiff, and not the defendant, will bear the burden of proof at trial the defendant may show that he is entitled to summary judgment either by affirmatively disproving that element of the case or by pointing to an absence of evidence in the record by which the plaintiff might carry the burden to prove that element. And if the defendant does so, the plaintiff cannot rest on his pleadings, but rather must point to specific evidence giving rise to a triable issue.

Whitlock v. Moore, 312 Ga. App. 777, 780-81 (2011) (citing Strength v. Lovett, 311 Ga. App. 35, 39-40 (2011)).

III. LEGAL ANALYSIS

Turning to the City's Personnel Code and the layoff ordinance at issue, the Court shall construe these ordinances according to legislative construction principles.

Construction of an ordinance is a question of law, subject to the canons of statutory construction, and it is the court's duty to determine and put into effect the intention of the lawmakers. In construing a legislative act, a court must first look to the literal meaning of the act. If the language is plain and does not lead to any absurd or impracticable consequences, the court simply construes it according to its terms and conducts no further inquiry. Further, statutes are to be construed in accordance with their real intent and meaning and not so strictly as to defeat their legislative purpose, and statutory construction must square with common sense and sound reasoning. These rules apply to the interpretation of city ordinances as well as statutes.

City of Atlanta v. Miller, 256 Ga. App. 819, 820 (2002) (quotations omitted).

The Court finds that the applicable provisions of the Personnel Code, including the definitions of "position," "class," and/or "class title" and the language of the layoff ordinance, are clear and unambiguous and have been construed by the City in accordance with their real intent and meaning. *See Id.* The Court further finds that the City's interpretation of the Personnel Code and/or layoff ordinance is consistent with statutory interpretation. *See Id.* The City is in the best position to construe and interpret the meaning of such terms as "position," "job title," and/or "class title" as set forth in the applicable provisions of the Personnel Code, and the City is also vested with the authority to implement the layoff ordinance in accordance with those provisions.

In furtherance thereof and based upon the record before the Court, including all affidavit testimony and documentary evidence submitted in support of the City's Motion for Summary Judgment and Plaintiff's response thereto, the Court finds that no factual dispute exists as to what Plaintiff's job title/position was at the time of the June 2008 reduction in force or as to the length of Plaintiff's service in that job title in relation to the other employees in the same position

who were retained by the City. As such, the Court finds that in June 2008, the City instituted the reduction in force in accordance with Section 4-1060 and laid off all affected employees, to include Plaintiff, in reverse order based upon length of service in the job title.

Having found that the City lawfully terminated Plaintiff's employment in compliance with the City's layoff ordinance, the Court does not need to address Plaintiff's claim for breach of contract. However, even if the Court were to reach this claim, the Court finds Plaintiff's breach of contract claim to be without merit. Plaintiff had no employment contract with the City, but at all times applicable hereto, was an at-will employee, subject only to the City's personnel manual(s) and the terms, conditions, and termination procedures contained within those manual(s). See Balmer v. Elan Corporation, 278 Ga. 227, 228 (2004); see also Jones v. Chatham County, 223 Ga. App. 455, 459 (1996).

IV. CONCLUSION

Therefore, for the reasons set forth above, IT IS HEREBY ORDERED AND ADJUDGED that Defendant City of East Point, Georgia's Motion for Summary Judgment is GRANTED, and Plaintiff Charles Kendrick's claims for breach of contract, declaratory judgment and injunctive relief should be and are hereby dismissed as a matter of law.

This Order is hereby made the Final Judgment of this Court in the above matter in accordance with O.C.G.A. § 9-11-54(b).

SO ORDERED this the 7th day of April, 2014.


CYNTHIA D. WRIGHT, JUDGE
Fulton County Superior Court
Atlanta Judicial Circuit

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