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SUPERIOR COURT

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CIVIL ACTION

CHRISTOPHER CARBONE,

Plaintiff,

v.

BOROUGH OF KINNELON;
KINNELON BOROUGH POLICE
DEPARTMENT, ROBERT COLLINS, in
his official and individual capacities,;
DANIEL COLUCCI, JR., in his official
and individual capacities,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MORRIS COUNTY
DOCKET NO.: L-591-10

CIVIL ACTION

COMPLAINT AND JURY DEMAND

Plaintiff Chris Carbone, for his Complaint against Defendants Borough of Kinnelon and Kinnelon Borough Police Department (collectively, "Kinnelon"), Robert Collins, and Daniel Colucci, Jr., states and alleges as follows:

PARTIES

1. Plaintiff Chris Carbone is a natural person residing in New Jersey.
2. Defendant Borough of Kinnelon is a municipality located in Morris County, New Jersey. Defendant Kinnelon Borough Police Department is a department and/or agency of the Borough of Kinnelon.
3. Defendant Robert Collins has at all relevant times been a Councilman of the Borough of Kinnelon. The Council of the Borough of Kinnelon is its governing body.

4. Defendant Daniel Colucci, Jr., has at all relevant times been a Councilman of the Borough of Kinnelon.

INTRODUCTION

5. Plaintiff Chris Carbone has at all relevant times been employed by Kinnelon as a Police Officer.

6. Officer Carbone first joined the Kinnelon Borough Police Department in or about June 1996 as a Patrolman.

7. Officer Carbone's work performance as a Patrolman has at all time been excellent, even superlative.

8. Throughout his employment and career with Kinnelon, Officer Carbone has consistently received highly laudatory performance evaluations, departmental recognition letters, and complimentary citizen letters.

9. Officer Carbone has never been subjected to any departmental discipline of any kind.

10. In 1999, Officer Carbone was elected as President of the Kinnelon Policeman's Benevolent Association ("PBA"), Local #341. Local #341 consists of sixteen (16) police officers.

11. In his capacity as PBA President, Officer Carbone has been the lead negotiator and advocate on behalf of Kinnelon police officers on all union issues and union contract terms, provision, and negotiations. The majority of Officer Carbone's negotiations and communications regarding union contracts were with the Police Committee of the Borough Council, which was comprised of several Councilmen, including Defendant Collins.

12. Officer Carbone has at all times been a zealous and diligent negotiator and union advocate on behalf of the Police Department's rank and file members.

13. In mid-2007, the PBA union contract with Kinnelon was up for review and for ultimate renewal at the end of the year.

14. Officer Carbone was approached by Eric Nederfield, the Police Committee Chairman, who requested that Officer Carbone present the idea to his membership of changing the medical insurance benefit plan so that the Borough might save money in costs.

15. The PBA reviewed the material and presented its proposed contractual language pertaining to the adoption of a new medical insurance benefit plan.

16. The Borough verbally agreed to the contract language proposed by the PBA; however, this verbal agreement was not reduced to writing.

17. In September 2007, Officer Carbone was advised that the Borough Council wanted to wait for the current contract to expire in December, at which time the new contract language pertaining to health benefits would be addressed and formally ratified.

18. Rather than keeping to its verbal agreement with the PBA, throughout the latter part of 2007, the Borough continually refused and failed to negotiate or communicate in any manner with Officer Carbone regarding a new union contract.

19. Faced with Borough Council's refusal to engage in good faith collective bargaining, Officer Carbone had the Union's attorney draft and forward a letter to the Kinnelon Borough Council and the local newspaper, The Suburban Trends, outlining

what had occurred and stating of the Union's complaints regarding the Borough Council's conduct related to the union contract negotiations.

20. Although this letter was never published, the contents of the letter and the fact that it was forwarded to the local press became known to the Borough Council members.

21. Only once Officer Carbone authorized distribution of this letter did the Borough Council schedule and hold a meeting with the PBA negotiating team.

22. During this meeting, several Borough Council members expressed concern over Officer Carbone's letter to the newspaper.

23. Defendant Collins chastised Officer Carbone regarding the newspaper letter, and aggressively expressed his opinion that the letter should not have been sent to the newspaper, and that union contract negotiation issues should not be discussed in any public forum.

24. Officer Carbone expressed his disagreement, but attempted to direct the meeting back to the substantive issues of union contract terms. Officer Carbone again raised the issue of the health benefit insurance plan and whether the proposed language was acceptable. Defendant Collins indicated at the meeting that this particular issue was acceptable. It was agreed that the parties would continue to meet and negotiate after the holidays.

25. On or about February 22, 2008, Officer Carbone received a phone call at his home from Defendant Collins. Defendant Collins advised Officer Carbone that a majority of the Council decided that they would not accept the proposed contract

language pertaining to the medical benefit plan that had previously been verbally agreed to in August 2007.

26. Officer Carbone responded that this was unfortunate, and that the issue would then have to be decided by a neutral arbitrator.

27. At this point, Defendant Collins explicitly threatened to take retaliatory action against Officer Carbone with regards to his employment with the Borough as a police officer. Defendant Collins stated, "Well Chris, it's your career and if that is the direction you want to go in"

28. Incredulous as to what he was hearing, Officer Carbone cut Defendant Collins off and stated "Bob, let's not even go there."

29. Officer Carbone immediately contacted Eric Nederfield and informed him of the conversation he had with Defendant Collins. Officer Carbone especially expressed his concerns about Defendant Collins' threatening statement concerning Officer Carbone's "career."

30. Later that same day, Officer Carbone attended a retirement dinner in the company of John Finkle, the Chief of the Police Department. Chief Finkle expressed that he was appalled by what Officer Carbone told him.

31. Shortly thereafter, Officer Carbone was summoned by Chief Finkle to meet with him. Officer Carbone and Chief Finkle discussed the threatening statement made by Defendant Collins. Chief Finkle suggested an off-the-record meeting with himself, the Mayor, Defendant Collins and Officer Carbone.

32. When this meeting later took place, Defendant Collins falsely denied making the statement threatening regarding Officer Carbone's career. Officer Carbone

assured the Mayor and Chief Finkle, in Defendant Collins' presence, that Defendant Collins did, in fact, make the threat to his career in retaliation for Officer Carbone's position with respect to the union contract.

33. Since that time, Defendant Collins has been extremely hostile and antagonistic toward Officer Carbone. Defendant Collins refuses to even speak to or acknowledge Officer Carbone's presence when they are in the same room together.

34. Beginning in or about September 2008, Chief Finkle awarded Officer Carbone the responsibility of handling the supervisory duties of Sergeant McFadden when Sgt. McFadden went out on disability. In taking on Sgt. McFadden's responsibilities, Officer Carbone became the acting supervisor of the squad.

35. In mid-2009, due to Sgt. McFadden's leaving the police force, it became necessary to hold a formal promotional process for a replacement Sergeant.

36. In furtherance of Defendant Collins' threat, Defendants purposefully and maliciously denied and refused to promote Officer Carbone to the position of Sergeant in retaliation for his protected speech and conduct with respect to the union contract and negotiations issues.

37. Instead, Defendants promoted a substantially less experienced, less senior, less educated and overall less qualified candidate, Officer David Crouthamel.

38. This retaliatory and unlawful decision was made by the Borough Council's Police Committee, of which Defendant Collins was a member.

39. The Committee refused and failed to promote Officer Carbone even though, upon information and belief, Chief Finkle specifically identified Officer Carbone to the Committee as his choice for the top and preferred candidate. Accordingly, the

Committee neglected and ignored the specific recommendation of the Chief of Police in a promotional decision, an almost unheard of circumstance.

40. Upon information and belief, the Committee ignored the Chief of Police's recommendation that Officer Carbone be promoted to the position of Sergeant even though the Chief is plainly in the best position to make an informed assessment of the requisite skills and performance of the various candidates.

41. Furthermore, the Committee refused to promote Officer Carbone to Sergeant even though he had already successfully been filling in and acting in the Sergeants capacity since Sgt. McFadden was absent on leave from the previous year.

42. In conducting the promotional exam, the Committee effectively engaged in a sham process.

43. First, the Committee completely discounted Officer Carbone's prior administrative and professional experience.

44. Moreover, in conducting the Police Committee Interview of Officer Carbone, the Committee purposefully failed to follow the guidelines of the Rules and Regulations Manual, which guided the Committee to focus its questioning on Officer Carbone's past performance and evaluations. These topics, that were actually relevant and pertinent to the promotional decision, were ignored by the Committee in its ranking of the candidates.

45. Indeed, Chief Finkle advised the Committee that they were misinterpreting promotional rules and regulations that he himself drafted in conducting the promotional process. Again, Chief Finkle's concerns were ignored by the Committee.

46. The Defendants were intent on punishing and retaliating against Officer Carbone for his prior protected conduct, and achieved this malicious goal in failing to promote him to Sergeant in 2009.

47. The position was instead awarded to a significantly junior officer, David Crouthamel.

**COUNT I – VIOLATION OF FREE SPEECH PROTECTIONS PURSUANT TO
THE NEW JERSEY CIVIL RIGHTS ACT**

48. Plaintiff hereby incorporates and restates the allegations contained in the preceding Paragraphs as set forth at length herein.

49. Defendants subjected Officer Carbone to an adverse employment action in retaliation for his exercise of his federal and State constitutional rights to free speech, in violation of the New Jersey Civil Right Act, N.J.S.A. 10:6-2 et seq.

50. As a result of Defendants' unlawful conduct, Officer Carbone has been subjected to job detriment and economic losses.

51. As a result of Defendants' unlawful conduct, Officer Carbone has been subjected to mental anguish, embarrassment, stress, anxiety, and humiliation and other pain and suffering.

WHEREFORE, Plaintiff demands the following damages and relief:

- a. Judgment in favor of the plaintiff and against the defendants;
- b. Compensatory damages;
- c. Punitive damages;
- d. Attorneys fees;
- e. Costs of suit;
- f. Such additional relief as this Court deems just and equitable.

COUNT II – VIOLATION OF FIRST AMENDMENT PROTECTIONS
PURSUANT TO 42 USC § 1983

52. Plaintiff hereby incorporates and restates the allegations contained in the preceding Paragraphs as set forth at length herein.

53. Defendants subjected Officer Carbone to an adverse employment action in retaliation for his exercise of his First Amendment right to free speech in violation of the 42 U.S.C. § 1983.

54. As a result of Defendants' unlawful conduct, Officer Carbone has been subjected to job detriment and economic losses.

55. As a result of Defendants' unlawful conduct, Officer Carbone has been subjected to mental anguish, embarrassment, stress, anxiety, and humiliation and other pain and suffering.

WHEREFORE, Plaintiff demands the following damages and relief:

- a. Judgment in favor of the plaintiff and against the defendants;
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- d. Punitive damages;
- d. Attorneys fees;
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COUNT III – PIERCE PUBLIC POLICY VIOLATION

56. Plaintiff hereby incorporates and restates the allegations contained in the preceding Paragraphs as set forth at length herein.

57. In or about April 2007, Chief Finkle issued a directive to all police personnel that an emphasis was being placed on speeding/traffic violations.

58. On or about February 26, 2008, Officer Carbone was conducting a radar detail on Kinnelon Road in accordance with the Daily Traffic Work Sheet for that day.

59. During his shift, Officer Carbone observed a vehicle doing fifty (50) miles per hour in a thirty-five (35) mile-per-hour zone.

60. The driver of the vehicle was Defendant Daniel Colucci, a Kinnelon Councilman, and a close personal friend of Defendant Collins.

61. Pursuant to procedure, Officer Carbone asked for Defendant Colucci's driver's license, registration and insurance card.

62. Defendant Colucci responded to Officer Carbone, "Do you know who I am?" The entire exchange between Officer Carbone and Defendant Colucci was recorded on videotape.

63. Officer Carbone issued a speeding citation to Daniel Colucci (Motor Vehicle Summons #054832) for traveling 50 mph in a 35 mph zone.

64. Defendant Colucci became extraordinarily hostile to Officer Carbone as a result of receiving this speeding citation.

65. Upon information and belief, Defendant Colucci complained to Chief Finkle regarding Officer Carbone, and accused Officer Carbone of issuing him a speeding ticket because of prior hostility engendered due to the union contract negotiations.

66. Indeed, Defendant Colucci was so incensed at receiving a speeding citation from Officer Carbone that he made a formal complaint against Officer Carbone

with the Morris County Prosecutor's Office seeking to have Officer Carbone criminally charged for issuing him the speeding violation; the Prosecutor's Office found that there was no improper conduct by Officer Carbone.

67. Defendant Colucci's hostility and anger toward Officer Carbone was a determinative factor in Defendants' decision to fail to promote Officer Carbone to Sergeant in 2009.

68. In short, Defendants retaliated against Officer Carbone and subjected him to an adverse employment action because he properly and correctly performed his duties as a police officer in issuing a speeding violation to Defendant Colucci, a Borough Councilman, who was driving at least fifteen (15) miles over the posted speed limit.

69. Defendants' retaliation against Officer Carbone in this regard is in violation of, and contrary to, numerous State public policies.

70. First, retaliation against a police officer for enforcing traffic laws when violated by a politician, or someone with political power, is in violation of the clear mandate of public policy favoring the safe and orderly operation of motor vehicles within the State of New Jersey, as embodied in N.J.S.A. 39:4-1 et seq.

71. Further, retaliation against a police for his neutral enforcement of the laws of New Jersey, even when violated by a politician, or someone with political power, is in violation of the clear mandate of public policy that police officers are: (1) to act as enforcers of the laws of the State; and (2) to conduct their professional responsibilities with the highest integrity, without favoritism, and without fear of reprisals for enforcing the laws. These policies are embodied in both statutory law and case law. See N.J.S.A. 2C:27-1 et seq.; MacDougall v. Weichert, 144 N.J. 380 (1996); Ballinger v. Delaware

River Port Authority, 172 N.J. 586 (2002). Indeed, N.J.S.A. 2C:27-5 makes it an explicit criminal violation to retaliate against another for his or her services as a public servant.

72. As a result of Defendants' unlawful conduct, Officer Carbone has been subjected to job detriment and economic losses.

73. As a result of Defendants' unlawful conduct, Officer Carbone has been subjected to mental anguish, embarrassment, stress, anxiety, and humiliation and other pain and suffering.

WHEREFORE, Plaintiff demands the following damages and relief:

- a. Judgment in favor of the plaintiff and against the defendants;
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- e. Punitive damages;
- d. Attorneys fees;
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- h. Such additional relief as this Court deems just and equitable.

Respectfully submitted,



David Zatuchni, Esq.
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Attorneys for Plaintiff

Dated:

2/9/10

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify that this matter in controversy is not the subject of other actions pending in any court or arbitration proceedings, or any such contemplated other actions or arbitration proceedings.



David Zatuchni, Esq.
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287 South Main Street
(Route 29)
Lambertville, NJ 08530
Attorneys for Plaintiff

Dated: 2/9/10

DESIGNATION OF TRIAL COUNSEL

David Zatuchni, Esq. is hereby designated as trial counsel in this matter.



David Zatuchni, Esq.
Zatuchni & Associates, LLC
287 South Main Street
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Lambertville, NJ 08530
Attorneys for Plaintiff

Dated: 2/9/10

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues and claims.



David Zatuchni, Esq.
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Attorneys for Plaintiff

Dated: 2/9/10