

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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Sheryl Le,

Court File No. 62-C5-06-009399

Plaintiff,

vs.

FINDINGS OF FACT,

CONCLUSION OF LAW

AND ORDER FOR JUDGMENT

City of Maplewood, Minnesota,

Eugene G. Copeland, Interim City Manager

for City of Maplewood, and Diana Longrie,

Mayor of City of Maplewood,

Defendants.

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The above-entitled matter came on for trial before the Honorable Kathleen Gearin, Judge of District Court at the Ramsey County Court House, St. Paul, Minnesota, on November 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, and 29<sup>th</sup> and December 1, 2007. Gregg M.

Corwin, Esq. appeared as counsel for and on the plaintiff. The plaintiff was also present. Julie Fleming-Wolfe, Esq. appeared as counsel for the defendants.

Upon all the files, testimony, exhibits, and proceedings herein, the court makes the following Findings of Fact:

1. Plaintiff resides in the City of Lino Lakes, County of Anoka, State of Minnesota. She worked as the Human Resource Director for the City of Maplewood from January 24 of 1994 until August 12 of 2006.
2. Plaintiff has a bachelors of arts degree from the University of Minnesota. She has had the following jobs in the human resources field since June of 1982: first in Hennepin County at the Medical Center as a generalist, next at the City of St. Paul as the Classification and Compensation Manager, next at the League of Minnesota Cities as a Personnel Advisor, and last at the City of Maplewood. All of the positions Plaintiff has held since June of 1982 were full-time, benefit-earning Human Services positions covered by the Public Employee's Retirement Association. Plaintiff had 24 1/2 years of service in the human resources field.
3. In November, 2005, Erik Hjelle, a City of Maplewood paid-per-call firefighter, was elected to serve a four-year term on the Maplewood City Council. At the same election, Diana Longrie, was elected to serve a four-year term as Mayor of the City of Maplewood. Both had been critical of city employees, especially higher level ones during their campaigns.
4. On January 6, 2006, Diana Longrie was sworn in as Mayor and Erik Hjelle as Council member for the City of Maplewood. In March of 2006, City Manager Richard Fursman sent a letter to the City Council advising them of his concerns

about possible open meeting law violations that were occurring between the Mayor and Council members Hjelle and Bartol. Mr. Fursman provided more detail on March 13, 2006, in an email to Council member Hjelle, copying the City Council and the City Attorney's Office. His concerns were legitimate and expressed in good faith.

5. In March of 2006, Rebecca Cave was elected to the city council to fill a term vacancy when a sitting council member resigned. Ms. Cave is married to George Cave, a paid-per-call firefighter for the City of Maplewood who had been disciplined recently. Ms. Cave was sworn in as a council member on March 13, 2006. She aligned herself with the Mayor and council member Hjelle. These three elected officials and many of their supporters were critical of the former council majority and much of the city management. After Ms. Cave took office they had the votes to make changes in city policy and to replace the City Manager. There were only four Council members.
6. On March 13, 2006, Mayor Diana Longrie called a Special meeting of the City Council for the following day for purposes of removal of City Manager Richard Fursman.
7. On March 14, 2006, a Maplewood special City Council meeting was held and Mayor Diana Longrie made a motion to remove Richard Fursman as City Manager, seconded by Council member Rebecca Cave. This was Cave's second day as a Council member. Before the vote was taken, objections were raised as to the potential conflict of interest for Council members Erik Hjelle and Rebecca Cave in voting to remove the City Manager. Council member Hjelle was

a City employee and Council member Cave's husband was a City employee. Both worked as paid per call firefighters. No action was taken because the City Attorney indicated there may be a conflict of interest and was asked to research that issue.

8. On March 15, 2006, Council member Erik Hjelle resigned as a paid-per-call firefighter effective immediately. Paid per call firefighters are City employees eligible for pay for each call or training they go on and covered by the Fire Relief Association pension.
9. On April 10, 2006, George Cave (Council member Rebecca Cave's husband) resigned as a paid-per-call firefighter. The resignation took effect before the 4-10-06 Council meeting. This resignation was also effective immediately.
10. At the April 10, 2006, council meeting, Mayor Diana Longrie again made a motion to remove Richard Fursman as City Manager and appoint Greg Copeland, as interim manager. The motion was seconded by Council member Cave and it passed 3-2 with Council member Hjelle being the third to vote yes.
11. At this meeting, Mike Stockstead delivered a request for public information, including emails, under the data practices act. He complained to Ms. Le about not getting the documents in a timely manner. Ms. Le complained at a staff meeting about Mr. Copeland delaying the response to this request. It was not proven that Mr. Copeland purposely delayed the response.
12. On April 24, 2006, City Council meeting, several items were discussed that had been continued from the last Council meeting. One of those items was related to increased funding for pension benefits for paid-per-call firefighters. Both Council

members Cave and Hjelle voted to increase funding for the pension plan for paid-per-call firefighters. This vote financially benefited both Hjelle and Cave's husband. Ms. Le believed that this vote constituted a conflict of interest by Hjelle and Cave. Because this was during the time period after their resignations and before they were reinstated, it may not have been a conflict. Her concern was reasonable.

13. The next day, both Erik Hjelle and George Cave requested reinstatement as paid-per-call firefighters for the City of Maplewood. This was two weeks after firing Mr. Fursman, the City Manager and one day after voting to increase the pension associated with their positions as paid-per-call firefighters. Plaintiff complained to City Attorney Dave Ramberg and others about this being a conflict of interest. Mr. Copeland reinstated both of them shortly thereafter.
14. When the payroll change forms necessary to reinstate Mr. Hjelle and Mr. Cave were forwarded to Human Resources for approval, Plaintiff added a signature line for the City Manager and brought them to Mr. Copeland for his consideration. She did not sign the payroll forms, although there was a signature line for her. Upon questioning by Mr. Copeland, Plaintiff explained her reasons for not signing the forms. She believed that by signing the forms she would indicate that she was recommending the action to reinstate them. She went on to explain that she felt it was a conflict of interest for City Council members to ask to be placed in City positions. She also told Mr. Copeland that she would never recommend that the City rehire former employees who had recent discipline on their records.

15. Mr. Copeland approved Hjelle's and Cave's reinstatement to positions as City employees. That was within his authority. Plaintiff felt this was additionally a conflict of interest and spoke to one of the City Council members, Will Rossbach, and one of the City attorneys about her concerns. She also called Tom Gruendhoefer, the General Counsel for the League of Minnesota Cities and discussed this with him. Mr. Copeland knew that she had complained about what she perceived to be conflicts of interest.
16. On April 11, 2006, Plaintiff met with Mr. Copeland and gave him benefit information and an application to complete. Usually this was done before a person was hired. When the Council majority fired Fursman, they were legally required to fill the position immediately. Mr. Copeland returned a mostly blank application to her. He completed the front and last pages and handed her a resume. He believed this was a sufficient response to her request. The resume was not attached and the application did not, at that time, refer to the resume. She immediately returned the applications to him explaining that she needed him to complete the inside pages.
17. City policy requires a standard application be completed and City ordinance requires that a background check be done. An application and waiver forms are needed to conduct a background investigation. These were legitimate requests by Plaintiff. Mr. Copeland was not cooperative in getting the form and the waivers submitted in a timely manner.
18. On or about April 13, 2006, Plaintiff gave Deputy Chief John Banick a copy of the application, signed by Copeland. This was part of her job.

19. Police Chief Dave Thomalla was notified of the initial criminal history result by Deputy Chief Banick. He immediately spoke to Plaintiff and the City Attorney, Patrick Kelly, because some of the information was controversial and potentially embarrassing to Mr. Copeland. Both Chief Thomalla and Plaintiff recommended that the remaining portions of the background investigation be completed by an outside investigator. Patrick Kelly agreed and spoke to Mayor Longrie and Mr. Copeland together in his office about the results of the criminal history check and the need to use an outside investigator. Patrick Kelly left that meeting and spoke to Chief Thomalla telling him that the Mayor wanted the background investigation done internally.
20. Ms. Le did not choose to have Banick do the investigation. She believed that it would be better to have an outside person do the background check.
21. Because Mr. Copeland submitted an incomplete application, Plaintiff sent a memo to the City Attorney on April 17, 2006, expressing concerns about potential liability to the City if a background investigation were not done per City Personnel Policies and the City ordinance. Copeland knew about her complaint. Plaintiff was concerned about the delay and the number of times Mr. Copeland returned an incomplete application. The April 17, 2006, memo expressed Plaintiff's concerns about not having a completed background investigation for the new manager, who is in the position of chief financial officer for the City, approving contracts, authorizing expenditures and in charge of all personnel matters. The City Attorney agreed that a completed application and a background investigation were required. Mr. Copeland resented her persistence. He remains sensitive

and defensive about the background report. His testimony on this issue was not credible.

22. The background investigation was completed by Deputy Police Chief John Banick after being assigned to do so by Chief Dave Thomalla. Plaintiff did not advise him on how to do the investigation, what to include in the investigation, or how to conduct it.
23. Chief Banick testified that he did not do anything different on Mr. Copeland's investigation than he did for other background investigations. Banick was concerned about some of the financial and employment information he received. Mr. Copeland believed that some of the negative findings were purposely taken out of context. He was angry at Banick because of this. He remains angry at both Banick and Le.
24. Mr. Copeland and the City Council members who appointed him were not happy with Banick's report. Deputy Chief Banick (now Crystal Police Chief Banick) believes his position was subsequently eliminated because of his involvement in the Association and the background investigative report that he prepared on Mr. Copeland.
25. Banick's testimony was credible. There is no credible evidence that the plaintiff did anything unprofessional regarding the investigation. Once the background investigative report was completed, Deputy Chief Banick provided it to Plaintiff because she was the Human Resource Director. Plaintiff personally made copies for each City Council member, the Mayor, and for Mr. Copeland. She then placed them in sealed envelopes marked confidential, included a cover



memo reminding them of the confidential nature of the report, and placed them in each Council member's box. She provided a copy to Mr. Copeland directly. This was not improper.

26. The background investigation report contained some controversial information about Mr. Copeland. This information concerned Council member Rossbach, Plaintiff, Deputy Chief John Banick and Council member Juenemann. The inclusion of this controversial financial and employment information upset Mr. Copeland and his supporters on the Council. Council member Rossbach believed after reading it that the City had appointed someone to the interim position of City Manager who did not have adequate qualifications for that job. He and Council member Juenemann called a Special Meeting of the City Council to discuss it. This increased the tensions between the majority and minority on the council as the majority continued to believe he was a good appointment and dismissed the results of the background report as unfair and biased.
27. Dr. Schultz testified that he obtained what he believed were admissions of ongoing open meeting law violations from Mayor Diana Longrie and at least two other sources. Mayor Longrie told Dr. Schultz that she was relying on a memo prepared by the City Manager of Roseville, Minnesota, with regard to sending emails to Council members. The Mayor believed these e-mails were appropriate. Dr. Schultz did not. He based his opinion on his experience advising city governments, as a political science professor and as a lawyer.
28. Although the purpose of the individual meetings between department heads and Dr. Schultz was to discuss communication, the Plaintiff took that opportunity to

report her concerns about law violations and about possible retaliation. Dr. Schultz viewed Plaintiff as a Whistleblower because she reported what she believed to be suspected violations of State Law to him, while he was working on behalf of the City Manager on City issues. Dr. Schultz incorporated her reports of suspected State Law violations and concern about retaliation into his final report.

29. Dr. Schultz believed that he might have to provide documentation regarding the production of his report at a future time so he kept copies of most of it. He incorporated Plaintiff's allegations and those made by Mr. Ramberg about open meeting law concerns into the final report.
30. Dr. Schultz specifically relayed Plaintiff's concern about the potential conflict of interest caused by "two Council members have (ing) employment contracts (either personally or with a spouse) with the City beyond their role as an elected officials, and they have also been the subject of City disciplinary proceedings involving the former City Manager and several department heads." (Exh 108, p 5 last paragraph and Exh 76, p 3 last pp) Dr. Schultz went on to describe Plaintiff's reports to him when he said: "In addition, the Mayor has a husband who was issued a restraining order in connection with his involvement with City Hall and officials. There is a clear perception of a conflict of interest in any matter in which these individuals vote on, or participate in matters that involve taking disciplinary action against staff who were involved in these incidents. In fact, there is a clear perception the decision to remove the City Manager was retributive."

31. Plaintiff's concerns about potential conflicts of interest regarding firing the former City Manager and the Fire Department's pension plan were reasonable. The fact that she did not like the members of the council majority and was unhappy with the results of the election does not mean that this report was made in bad faith.
32. These concerns were readily attributed to the Plaintiff by Mr. Copeland, Mayor Longrie and Council members. This became even more evident after receiving Derk Schweiger's report. They knew that she had made these complaints before she was fired.
33. At a staff meeting on May 9, 2006, Mr. Copeland gave staff a copy of a budget-related memo he prepared that was discussed at the May 8, 2006 council meeting. The memo asked for direction for budget planning and recommended that the City not increase the levy above that which was in place for 2006. He stated that three Council members agreed with that recommendation and two did not. The department heads told him what impacts freezing the levy amount would have and discussed increases in fixed costs. The Assistant Finance Director and Plaintiff explained that there were automatic pay increases for employees under the contracts that would have to occur. Plaintiff brought up the fact that all seven bargaining units were negotiating that year and that other comparable cities have already settled for 3%. She went on to explain that the City's bargaining history showed increases consistent with those of comparable cities. Mr. Copeland didn't respond other than to say the Council had spoken. Plaintiff then attempted to explain the impact of trying to negotiate no increases with the unions. Most of the unions were "essential" under law and therefore

had the ability to go to arbitration. Plaintiff explained that she felt the likely outcome of arbitration would be 3%. Plaintiff explained that if she tried to negotiate no increase, the unions would very likely go to arbitration and would likely receive 3%. This opinion was based on her years of experience. Plaintiff asked for clarification on whether she was to try to negotiate no increase or could negotiate up to 3%. Mr. Copeland didn't provide a clear answer.

34. This had a negative effect on her ability to negotiate with the unions in good faith. She requested a closed meeting with the council to discuss parameters. He refused to allow this despite the fact that this had happened frequently during past union contract negotiations.
35. After the May 9, 2006 staff meeting, Plaintiff went to talk to Mr. Copeland, as she felt she was being set up to fail. She believed that three of the elected officials wanted to get rid of her. This belief was reasonable. Mr. Copeland didn't disagree with her or attempt in any way to ease her fears. Plaintiff told him she would be willing to resign under a buy-out. He asked what she would need. She began by explaining that she wanted something similar to what Mr. Fursman received. Mr. Copeland asked her to put it in writing. He then asked how long Plaintiff would need to stay before she resigned. She indicated that she would need a couple of weeks to make a list of what needs to be done and to organize some files.
36. Later that day, Plaintiff gave a written proposal to Mr. Copeland. She considered it to be a confidential settlement proposal. It was not a complaint of discrimination based on gender or any other classification. The phrase "hostile

work environment” was used in the document to describe belief that she was being set-up to fail and that the Council majority wanted her gone.

37. After giving the proposal to Mr. Copeland, he cut off all contact with Plaintiff. If she walked toward him and his office, he would turn, go into his office and close the door. On May 16, 2006, Plaintiff had not received any response to her proposal to resign. She became concerned that the Mayor, City Council members and Mr. Copeland would retaliate against her. After discussing this with her attorney, she sent a memo to the City Council addressing the lack of response to her settlement proposal and attached two documents. This letter put the City Council on notice that Plaintiff was concerned about Mr. Copeland taking possible retaliatory actions against her.
38. The same day that Plaintiff sent her memo to the City Council describing her concern about retaliation by Mr. Copeland, Mr. Copeland discussed “restructuring and HR” with City Attorney Dave Ramberg. On May 17, 2006 Mr. Copland discussed “Sherrie Le and City Manager’s reorganization authority” with the City attorney. (Exh 55 and 78)
39. On May 18, 2006, Plaintiff received a memo from Mr. Copeland ordering her to cooperate with an investigation of her complaint as stated in her confidential settlement proposal.
40. On May 19, 2006, an attorney by the name of Derk Schweiger, called Plaintiff to set up an investigative interview with her for the following Wednesday. He told her that he was retained to do the investigation for the City. Plaintiff asked him

about his background doing this type of work, as she had never heard of him. He referred her to his website. She asked him specifically about his background in doing employment investigation. He then talked about being a county attorney in Iowa. Plaintiff apologized and explained that her reason for being concerned was that he was hired by the individuals she was complaining about.

41. Mr. Schweiger was recommended to Mr. Copeland by Mayor Longrie. Mayor Longrie and her husband met Mr. Schweiger at Bar Association social hours she and her husband attended. Mr. Copeland had received suggested names from both the City Attorney's office and from the League of Minnesota Cities, but instead selected a social acquaintance of the Mayor. This raised questions in Ms Le's mind about his independence and objectivity. These concerns were reasonable.
42. Mr. Schweiger primarily practices in the area of criminal defense, divorce, custody and personal injury law. He had never done any employment investigations in Minnesota under Minnesota law until Plaintiff's investigation. He did not advertise as an employment lawyer. It was within Mr. Copeland's authority to hire Schweiger.
43. On May 24, 2006, Plaintiff met with Derk Schweiger for the first time. Before they began, she asked Mr. Schweiger what was the purpose of the investigation. He said he was asked to investigate her complaints. He said that he didn't know what her complaints were. He had only received a copy of the confidential settlement proposal. (Exh 75) Mr. Schweiger began Plaintiff's interview stating that he knew that she felt some hostility and asked her to start with that.

44. In the confidential settlement proposal prepared by Plaintiff, she used the words "hostile work environment". (Exh 75) Plaintiff described what she meant by those words to Mr. Schweiger in her first interview with him. She told Mr. Schweiger, in response to his question, that she felt that she was working in an openly hostile, retaliatory environment where her job was repeatedly threatened. She told him that she was not getting information necessary for her to do her job. She was being left out of the loop. She added that she was being criticized publicly and she was being set up for no-win situations.
45. Plaintiff provided a copy of the same memo she had given to Dr. Schultz earlier, describing both her concerns about the hostility directed toward her by certain individuals and complaints about a number of possible State law violations committed by Mr. Copeland, Mayor Diana Longrie and Council members Hjelle and Cave. She shared her concerns about violations of open meeting laws, data practices law and conflicts of interest law. She never once said her complaint was about sexual harassment, sex discrimination, or any other protected class discrimination. (Exh 76,) Mr. Schweiger knew that Plaintiff did not make a complaint of any violation of state law based on protected class status.
46. Ms. Le continued to make complaints of suspected violations of State Law as the investigation proceeded. In late July, 2006, Plaintiff reported her concern about a possible conflict of interest when Mr. Copeland created his own version of a City Manager job description. She was concerned because he intended to be an applicant for the position. She emailed her concerns directly to Mr. Copeland. (Exh 93 and Exh 76)

47. On July 24<sup>th</sup> Mr. Copeland discussed hiring an attorney to do part of Plaintiff's job at the City council meeting. (Exh 61)
48. Mr. Copeland referred to the May 9, 2006 document as a settlement proposal when initiating the investigation. Mr. Schweiger refers to it as a "Demand letter" throughout his report. Mr. Schweiger confirmed in his report that Ms. Le told him that her concerns were not about hostility towards her regarding any protected class status. He knew that her complaints had nothing to do with discrimination.
49. The overall tenor and choice of words the investigator used to describe Plaintiff versus the manner in which he described Mr. Copeland, Mayor Longrie, Council member Cave, and Council member Hjelle is less than professional. He used words like: instigated, insinuated, demand, more sour grapes than logic, was highly disrespectful, shoots back, instituted a campaign against Copeland, not having her way, refused to provide, fails to note, circumventing the City Attorney, immature, fraternizing with employees, unilaterally instituted, criticized, claims, accused, veiled threat, quite peculiar, spearheaded by when talking about the Plaintiff. When referring to the four individuals that were the subjects of her complaints he used words like: reports, stated, requested, mentioned, viewed as, explained further, expressed, discussed, shared, brings up, informs, another good question, has numerous legitimate questions, responded, clarified, explained further, believed, posed the question.
50. On August 7, 2006, Mr. Schweiger gave the final report to Mr. Copeland. The report contained, numerous specific complaints made by Plaintiff about what she believed were illegal actions by city officials and City Manager Copeland.



Plaintiff was fired from her position on August 12, 2006, within four days of Mr. Copeland's receipt of the investigative report prepared by Derk Schweiger.

51. Council member Rossbach, former Assistant Finance Director Bauman and Former Deputy Police Chief Banick individually concluded that Plaintiff was terminated at least in significant part because she reported violations of the Data Practices Act, Open Meeting Law, and Conflict of Interest statutes. Rossbach testified that Plaintiff had discussed these concerns with the City Council, Mr. Copeland, and the City Attorney before her firing. Rossbach testified that he believed Le's complaints were legitimate. Ms. Bauman believed that Le was also retaliated against for filing the union petition. Rossbach, Bauman and Banick were credible witnesses.
52. Mr. Schweiger referred to Ms. Le's involvement in the union organizing effort as "a veiled threat". He interpreted her unionizing efforts as an attempt to threaten the City with unionizing employees if they did not accept her settlement offer. Her involvement in these unionization efforts was protected activity under the law and discharge for this protected activity was unlawful.
53. Prior to June 15, 2006, there were approximately 38 employees that were not unionized in the City of Maplewood. These workers were managers. This group of 38 employees decided that they wished to form a bargaining unit after Ms. Cave's election. They were concerned because the Mayor, Councilmember Hjelle and Councilmember Cave were critical of management level employees. They had a right to publicly express criticism even though it may not have been

conducive to a good employee/council working relationship. The employees had a right to be concerned.

54. After the investigation began, Mr. Copeland requested that Plaintiff conduct a salary survey of department heads and other high-level staff. The staff were concerned that non-union salaries would be cut. Mr. Copeland admitted that Council members had discussed cutting staff salaries in his testimony. Members of this group asked Plaintiff to take the lead in the formation of a bargaining unit to protect them. In mid-June, Plaintiff personally prepared, signed and delivered the petition for representation.
55. She drafted Bylaws for a new association and made sure every non-union employee in this group was notified. Plaintiff collected signature cards and prepared and signed a petition requesting the Bureau of Mediation Services to recognize the Association as the exclusive bargaining representative for the petitioning employees. (Exh 58) The City received a maintenance of Status Quo order on June 16, 2006. (Exh 58)
56. Plaintiff met with Mr. Copeland and one of the City's attorneys as a representative of the group to try to reach agreement on the make up of the bargaining unit. They did not reach agreement. Mr. Copeland wanted the group split up into different bargaining units. Mr. Copeland particularly wanted the department heads to be in a separate unit from the others. His concerns were reasonable.
57. After the Petition was submitted, the newly elected Council members started publicly making derogatory statements about her at meetings. Council member

Hjelle began publicly berating Plaintiff and accusing her of unprofessional and illegal behavior at City Council meetings. Hjelle made statements about Plaintiff, using both her name and job title, indicating that she violated the City's Personnel Policies and City ordinance and may have violated State law. He stated that her release of the Copeland background report violated data practices law. The City Council and Mr. Copeland had already been advised by the City Attorney, on June 20, 2006, that Ms. Le's memos about how the background investigative report should be handled were correct. (Exh 85) Hjelle did not like Le, did not believe that she was a good employee, and resented her role in a prior disciplinary investigation involving him in his job as a firefighter.

Councilmember Cave also resented Le's role in the discipline of her husband.

58. The relationship between Plaintiff and Mayor Longrie, Council member Cave and Council member Hjelle was hostile. Ms. Le did not like or respect the mayor or Councilmember Hjelle or Councilmember Cave. She was not happy about their elections. Her dislike made it more difficult for these parties to interact and communicate regarding city policy.

59. Immediately after the July 12, 2006 meeting, Bruce Anderson called Plaintiff by cell phone and told her about the derogatory comments made by Hjelle at the meeting. In a conversation with Anderson after the phone call ended, Hjelle stated that Copeland was neither his, nor Council members Cave's choice as City manager. He added that he would vote to remove him after he finishes a few more things. Anderson interpreted that comment as implying getting rid of Le. This interpretation was reasonable. Anderson then reminded Hjelle that

Plaintiff had offered to be bought out. Hjelle said he had been willing to give her two months (pay), but when that BMS thing came through he "... wouldn't give her a penny." This was not the only time Hjelle expressed his hostility to the proposed new union.

60. On August 1, 2006, Plaintiff and several other employees in the group met at the BMS for a pre-hearing conference to try to mediate a description of the unit. Mayor Longrie and Alan Kantrud, the new City Attorney represented the City. Plaintiff was the primary spokesperson for the Association at that meeting. Agreement could not be reached. The City needed time to review the job descriptions, so a meeting was set for October to continue the pre-hearing conference. Plaintiff forwarded all job descriptions to the new City Attorney the next day.
61. All actions taken by Plaintiff related to the formation of the bargaining unit were protected activity under the State labor law, Minn. Stat. Ch 179A.
62. Plaintiff was fired from her position on August 12, 2006, less than two weeks after the first BMS pre-hearing conference. (Exh 60) Plaintiff was fired during the time the BMS Maintenance of status Quo Order was in place and in effect. The order forbade the City from changing the existing conditions of employment and discriminating against employees with respect to their tenure as a result of filing the petition. (Exh 58)
63. The termination letter cited as one of the reasons for the firing that Plaintiff conducted herself in other than a professional manner. The defendant has not proven by a preponderance of the evidence, that she was unprofessional in her

dealings with either the new city manager or the city council. The relationship was tense. Both sides made some efforts to deal with each other professionally despite the tensions, mutual distrust, and mutual dislike. The overall tone of Plaintiff's e-mails to Copeland and the Council members was respectful.

64. After the new bargaining unit was certified in October of 2006, Council member Hjelle questioned Mr. Copeland as to whether the newly organized department heads should be treated differently in terms of status due to their becoming unionized and referred to them as "common labor". (Exh 115) In subsequent City Council meetings, he made a number of disparaging remarks about the new union and the employees who were covered by the union.
65. Council member Rossbach concluded that the reorganization was not done for budgetary reasons because he believed that it did not save money. There are additional costs the City has had to pay too many of the people the City removed. With regard to the elimination of Plaintiff's position, Council member Rossbach testified specifically that the City hired a legal firm to take on Plaintiff's duties and that the payments to the legal firm exceeded the costs of Plaintiff's salary. This was confirmed by the former Maplewood Assistant Finance Director, Gayle Bauman. Mr. Fursman may have believed that it would be cheaper to eliminate her position. It is not clear whether it will save money over the long term. Plaintiff's union activities played a substantial part in his decision to eliminate the position. His position that the unionization had no effect upon the "reorganization" was not credible.

66. The newly formed Association objected to the elimination of the Association positions. The Association also sent a letter to BMS objecting to Plaintiff's termination as a violation of the Maintenance of Status Quo Order issued by the BMS pursuant to M.S. Ch 179A. PELRA.
67. Mr. Copeland testified that three Association positions were eliminated. The facts show that nine Association positions were eliminated. They included: the Human Resource Director, Park and Recreation Director, Finance Director, Community Center Manager, Deputy Police Chief, City Clerk, Deputy Fire Chief, Public Safety Communications Supervisor and Public Safety Communications Manager. Plaintiff's position was eliminated from the September version of the 2007 budget. Mr. Copeland began recruiting for the firm that would replace her position on July 24, 2006.
68. Copeland states that he believes that it was a conflict of interest for Plaintiff to continue to negotiate union contracts and be a union member.
69. From 12-01-06 to 12-05-06, the City published the reason for the reorganization on the City's website entry regarding major Initiatives of the 2007 budget. The first item listed a reorganization of City departments creating three new positions, above that of the department heads. The rationale was clearly stated as: "This reorganization is required for accountable management of all City departments given the action by department heads to vote to form a labor bargaining group in October 2006." After discussions with the City Attorney, the phrase "given the

action by department heads to vote to form a labor bargaining group in October 2006," was deleted. (Exh 114)

70. At 4 or 4:30 pm on December 4, 2006, Mr. Copeland provided a copy of a Power Point Presentation he would be presenting to the City Council at the 7 p.m. "Truth in Taxation" meeting to Assistant Finance Director Gayle Bauman. Mr. Copeland's budget presentation included a slide describing the reason for the reorganization. (Exh 113) The page was entitled "New Department Management Structure" and contained the following language: "Development of a new department management structure to assume management functions formerly executed, wholly or in part by department heads prior to their decision in October 2006 to join a new labor organization to negotiate a labor contract for their supervisory services." After he gave the Power Point presentation to Ms. Bauman to review, but before 7 p.m., the slide was removed from the presentation. It was clear from the slide and the website that the reason for elimination of the positions was largely due to the employee's decision to form a union.
71. The "reorganization" eliminated a number of Association positions and created new positions to do the work of Association members. The City opposed having the new positions in the Association.
72. The City maintains Plaintiff was fired for two reasons. The first was discussed earlier: the City concluded that Ms. Le's clear statement that her claim was not of discrimination based on protected class status, or of sexual harassment, meant that she made a false complaint in her confidential settlement proposal.

Secondly, the City concluded that the investigation revealed Plaintiff's "disdain and unwillingness to work with not only the majority of the City's elected officials, but its manager as well." Mr. Copeland went on to describe this further as acting other than professionally and "undermining the City Manager." Both of these stated reasons are pretextual.

73. Because of Plaintiff's illegal termination under both the Whistleblower's Act and PELRA, she lost salary and benefits from August 12, 2006 to present. Plaintiff's gross salary at the time of her termination was approximately \$105,000. The benefits she received included family health, 75% paid by the City, dental insurance 100% of single coverage paid by the City, \$40,000 life insurance paid by the City, long-term disability insurance - 100% paid by the City, a free community center membership, vacation, sick leave, annual leave (PTO), holidays, paid educational opportunities, conferences, and a City contribution to deferred compensation. All other benefits were 100% paid for by the City.
74. Plaintiff also received PERA pension contributions from the City based on the percentage set in State law. She is vested in PERA with 24 1/2 years of service. Plaintiff had planned to stay in her position of Human Resource Director until she retired. She had planned to retire at age 58 from the City of Maplewood. There is no guarantee that she would have retained her employment at Maplewood until she was 58. She may have received a better job offer. The City may have legitimately eliminated the position. To award damages for loss of future pension payments would be speculative.



75. Plaintiff's gross compensation (\$105,000 pay and \$27,000 benefits) at the time of her termination was set at \$132,000 per year for 2006. Pay would have increased by 3% for 2007 (\$108,150) and 3% for 2008 (\$111,394). The Association agreed to a 3% COLA for 2007 and 3% for 2008. Plaintiff has not proven by a preponderance of the evidence that benefits would have increased beyond the estimated value of \$27,000 in 2006.
76. Plaintiff made attempts to mitigate her damages by trying to obtain other full-time employment. She has not found a full-time position since she was terminated. Her job search has been hampered by the emotional distress caused to her by the unlawful firing. Plaintiff has worked since then doing consulting jobs for cities. She earned \$16,000 before taxes but after expenses from August, 2006 through December, 2006. She earned an estimated \$50,000 before taxes and after expenses for the year 2007.
77. Plaintiff has not proven by a preponderance of the evidence that either defendant Copeland or Defendant Longrie should be held personally liable.
78. The Minnesota Whistleblower law provides that an employer shall not discharge, discipline, threaten or otherwise discriminate against or penalize an employee because the employee in good faith reports a violation or suspected violation of any state law or rule adopted pursuant to law. Minn. Stat. ' 181.932, subd. 1(a) (2004).
79. To assert a claim under Section 181.932, an employee must first establish a prima facie case for retaliatory discharge. Cokley v. City of Otsego, 623 N.W.2d 625, 631 (Minn. App. 2001) review denied (Minn. May 15, 2001). A prima facie

case of retaliatory discharge under Section 181.932 requires a showing of (1) statutorily protected conduct, (2) adverse employment action, and (3) a causal connection between the two. Gee v. Minnesota State College and Universities, 700 N.W.2d 548, 555 (Minn. App. 2005).

80. Plaintiff has established a prima facie case for retaliatory discharge. She engaged in statutorily protected conduct when she insisted that interim city manager Eugene Copeland complies with city policy in completing a standard application and cooperating in a background investigation by providing certain waiver forms and a completed application form. Plaintiff raised conflict of interest issues relative to the application of Minn. Stat. 471.87 with respect to council members voting to increase their own compensation or spouse's while holding a city job. Plaintiff further engaged in statutorily protected conduct when she reported to Dr. David Schultz, consultant hired by the city, possible violations of state law by three members of the city council, one former council member and by Mr. Copeland. Plaintiff also sent Dr. David Schultz a written document describing her concerns, which included several specific instances of possible state law violations with respect to the Open Meeting Law, data practices laws and conflict of interest law. These violations were reported by Ms. Le in good faith. She had no employment duty to make these reports, except for the request for the employment application and waivers from Mr. Copeland. Both Ms. Le and Dr. Schultz interpreted his role as that of an agent for the City of Maplewood. Dr. Schultz was an impartial, credible witness and report writer.

81. Plaintiff engaged in statutorily protected conduct when she in good faith reported what she believed were conflicts of interest, Open Meeting Law violations and data practices violations to Dr. David Schultz, Derk Schweiger, Eugene Copeland, Dave Ramberg and members of the Maplewood City Council. The Act protects good faith reports of violations of state or federal law. Anderson - Johannigmier v. Mid-Minnesota Woman's Center, Inc., 637 N.W.2d 270, 274 (Minn. 2002). Plaintiff satisfied the good faith requirement by showing that she made the reports for the purpose of blowing the whistle, i.e., to expose an illegality. Obst v. Microtron, Inc., 614 N.W.2d 196, 202 (Minn. 2002).
82. An adverse employment action was taken against Ms. Le. She was fired and her job was eliminated.
83. The third prong of the prima facie test is a causal connection between the statutorily protected conduct and the adverse employment action. That has been proven.
84. Plaintiff had no responsibility to enforce the Open Meeting Law or data practices requests unrelated to personnel matters. She did not benefit by making said reports. She simply reported facts that, if proven, would have constituted a violation of law or rule adopted pursuant to law. Abraham v. County of Hennepin, 639 N.W.2d 342 (Minn. 2002). Plaintiff's verbal reports to Dr. Schultz and Derk Schweiger and her written reports to Eugene Copeland, Mayor Longrie and members of the city council, met the definition of "report" in Janklow v. Minnesota Board of Examiners for Nursing Home Administrators, 536 N.W.2d 20 (Minn.

1995). Mr. Copeland, the city attorney, Mayor Longrie and council members are public officials of the city.

85. Once an employee has established a prima facie case of retaliatory discharge, the burden of production shifts to the employer to articulate a legitimate non-retaliatory reason for its action. Cokley, 623 N.W.2d at 620. The reasons given by the Defendant in this case are pretextual. Plaintiff did not make a false report of a hostile work environment. She was not uncooperative despite her dislike of Mr. Copeland. Plaintiff never claimed a violation of the discrimination laws. It was reasonable for her to believe that City Manager Copeland and some of the City Council members were hostile towards her.
86. Plaintiff has met her burden in demonstrating the City's justification was pretextual. She has met her burden in proving her whistle-blowing complaints.
87. Complete reinstatement is impractical or impossible because plaintiff's position has been eliminated. However, plaintiff needs to be reinstated to receive pension credit for the time her employment ended up to the date of trial.
88. Plaintiff is entitled to back pay and benefits from August 12, 2006 to the date of trial and to front pay from the date of trial until August 12, 2008. The total amount of past pay and benefits and front pay should be reduced by the amounts she has earned and is reasonably expected to earn from trial until August 12, 2008. She should be awarded pay and benefits of \$184,714.
89. Plaintiff is also entitled to reasonable attorney's fees and costs and disbursements.

90. Minn. Stat. §179A.13, subd. 1 provides that any employee aggrieved by an unfair labor practice as defined in this section may bring an action for injunctive relief and for damages caused by the unfair labor practice in the district court of the county in which the practice is alleged to have occurred.
91. The statute further provides "that public employers, their agents and representatives are prohibited from (1) interfering, restraining, or coercing employees in the exercise of the rights guaranteed in Section 179A.01 to 179A.25; (2) dominating or interfering with the formation, existence or administration of any employee organization or contributing other support to it; (3) discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization; (4) discharging or otherwise discriminating against an employee because the employee has signed or filed an affidavit, petition, or complained or given information or testimony under sections 179A.01 to 179A.25; (10) violating or refusing to comply with any lawful order or decision issued by the commissioner. "
92. The BMS cease and desist relevant in this case order provided that wages, hours and all existing conditions of employment of the employees could not be changed as of the date of the order. Ms. Le's termination from employment which changed her terms and conditions of employment occurred while the order was in effect.
93. By discharging plaintiff at least in significant part because she filed a petition for certification and represented the Association in BMS prehearing procedures, the city committed an unfair labor practice.

94. The city's subsequent reorganization after plaintiff's termination also constituted an unfair labor practice. The city attempted to punish association members, including plaintiff, because they organized a bargaining unit. It did so by eliminating their positions, reducing the size of the unit, and creating non-bargaining and other lower paid positions to do the work of union positions and members. The reorganization was at least in part to punish petitioning employees by eliminating their positions from the union after it was certified.
95. Plaintiff is entitled to damages in the form of back pay and benefits for her discharge from employment in violation of Chapter 179A together with front pay, attorney's fees and costs and disbursements.
96. Plaintiff has failed to prove any grounds for entering judgment against Mayor Longrie or Mr. Copeland individually.

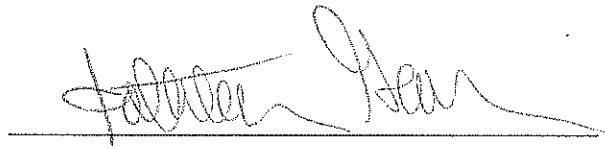
#### **ORDER FOR JUDGMENT**

1. Plaintiff is awarded back pay and benefits and front pay in the amount of \$184,714.00 from the City of Maplewood.
2. She is also awarded restoration of her seniority and benefits from August 12, 2006 to the date of trial.
3. Plaintiff is awarded her attorney's fees. The amount will be determined at a later date.
4. Plaintiff is ordered to submit a request for attorney's fees together with costs and disbursements on or before March 31, 2008.

5. Defendant shall have until April 21, 2008 to respond to this request and/or to request a hearing on that issue.
6. Plaintiff's claims against Mayor Longrie and Gregory Copeland as individuals are dismissed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: 2-28-08



A handwritten signature in cursive script, appearing to read 'Kathleen Gearin', is written over a horizontal line.

Honorable Kathleen Gearin  
Judge of District Court