IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES W. RAMSEY,

Plaintiff,

v. MEMORANDUM and ORDER

CITY OF NEW LISBON and CITY OF NEW LISBON UTILITY COMMISSION, 04-C-850-S

Defendants.

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Plaintiff James W. Ramsey claims that defendants City of New Lisbon and City of New Lisbon Utility Commission violated his First Amendment and Fourteenth Amendment due process rights when they terminated his employment.

On April 8, 2005 defendants filed a motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff James W. Ramsey is an adult resident of the City of New Lisbon, Wisconsin. Defendant City of New Lisbon is a Wisconsin municipal corporation and defendant City of New Lisbon Utility Commission is a city department. Plaintiff was hired as a utility clerk by the City of New Lisbon in April 2000. His employment was

never subject to any form of written employment contract or agreement.

In 2001 the Common Council of New Lisbon adopted a new ordinance to codify the powers of the Utility Commission. Under this new ordinance the Utility Commission consists of five commissioners, one of which is the an alderperson from the City Common Council. The ordinance specifically provides that the commission may employ and fix the compensation of such other employees as it deems necessary for the management and operation of the city's utilities. Paul Barnes, Roy Granger, Dan Kallies, Mickey Kraiss and Mark Rudig are all utility commissioners.

In 2002 the City created the new position of City Administrator which combined the traditional functions and duties of the City Clerk/Treasurer as well as supervision of the city's utilities and its employees. In September 2002 the city hired Nicholas Onyszczak as city administrator.

The Utility Commission has full authority to hire and fire employees of the utility including the utility clerk. The City of New Lisbon and its utility commission do not have any policies or ordinances guaranteeing the future employment of utility clerks and utility clerks can be terminated at any time.

On March 31, 2004 plaintiff attended a regularly scheduled utility commission hearing. The commission members, the mayor, the city administrator and alderperson Kay Willard attended the

meeting. Plaintiff gave his utility clerk report to the commission and asked whether the commission would pay him and the deputy utility clerk to attend a debt-collecting seminar. The request was denied.

On the morning of April 1, 2004 plaintiff sent an e-mail from his city e-mail account to Commissioner Rudig's personal e-mail account which stated as follows:

> I wanted to let you know that I was disappointed with your position that the requested one day training on Collection Techniques was not necessary for Jennie and me. Neither Jennie nor I have ever brought anything to the commission that was not sincerely believed by us to be of benefit to our job for the utilities. We had hoped that not only would the training itself be of benefit but would also give us a chance to talk with other organizations attending to see what other collection techniques were being used by them.
>
> I did not pursue this further at the meeting because of the presence of a council member at our meeting.
>
> One final point I would like to understand: I don't understand why its okay to pay a lineman $154.00 extra per week to get him to stay with the city but not be able to afford a one-time payment of $180.00 for a one-time training day for two employees in the office.
>
> I apologize if this sounds out of line but I am really trying to understand this reasoning.

After receiving plaintiff's e-mail Rudig sent an e-mail to the mayor the city administrator and some of the commission members which stated:

> I just received the enclosed email from Mr. Ramsey. I don't know what problem he has with me but if I have been out of line in any way I would appreciate it and respect the opinion of one of you guys. Otherwise, if Mr. Ramsey is looking for a fight or trying to irritate me...he is going about it in the very correct way.
> I request a special meeting to settle this matter. And I assure you that I have had it with Mr. Ramsey bad-mouthing me and my business. I sincerely don't know what I have ever done to him, but he has sure had it in for me and want it stopped.

The same day Rudig sent plaintiff a response to his e-mail which stated as follows:

> I suggest that you take this matter up with the commission and I also suggest you stop hiding behind and dragging others into your petty personal battles, also if my input during our meetings does not meet the consensus of the other members then I am sure they will so inform me and cast their vote accordingly.
>
> I trust whatever problem you have with me might be handled in an adult manner, and while we are on the subject, I would appreciate it if you would stop bad-mouthing me for whatever reason you have never shared with me.
> I look forward to the prompt resolution to whatever issues you have with me.

Plaintiff sent a second e-mail to Rudig which stated:

> I am not certain what the comments in your note mean? What do you mean by petty personal battles and who did I drag into this? What bad mouthing have I done with you? Since you seemed to have the biggest problem with the request I wondered what the reason really was. I did not mean the question to be mean spirited, only really wondered why you were so against it. I didn't think I said anything so bad in my note-only wondered about it because

> I didn't think the issue could be the dollars involved.
>
> As to any problems between us I have thought you were upset with me. You called me and expressed a rather strong concern with me buying a car elsewhere. I did not think that was appropriate but did not bad mouth you about it. I was more surprised than angry.
>
> I also believed it inappropriate when I approached the commission about a raise for Jennie that your comment was "now that we know how much you love her, what do you really want?"
>
> When I purchased my truck from you I gave you top ratings on the survey from Ford just as had been directed on four occasions to do by Gary. When everyone else involved with the commission got a gift from you last Christmas I was certain that you were the one mad at me for buying a vehicle from someone else. If you are asking how I answered a question from a different dealer about why I didn't buy from your dealership, I did respond that I did not appreciate your sales staff directing me on four occasions to "make sure you give top marks to everything on the Ford survey or I would be responsible for you not Letting your quota of cars." I have never had that done to me before. I realize that I should have sat down with you at the time to talk about that and am sorry I did not.
>
> I have wanted to sit down with you but have believed uncomfortable doing so (sic). I will be happy to do so at any time you want.

Rudig then sent a second e-mail to the commissioners and the city administrator which said:

> I just received a response from Mr. Ramsey with some extremely inappropriate accusations. This needs to get handled immediately and possibly the city attorney may need to get involved. Frankly, with some of the things he

> said, it might be necessary to get an attorney for my own protection. This is truly the most ridiculous situation that I can imagine, but apparently a serious one.

The next day, April 2, 2004 plaintiff sent an email to Rudig apologizing for anything he had said to upset him.

A special closed meeting of the utility commission was held on April 6, 2004. The commission voted to terminate plaintiff. On the morning of April 12, 2004 plaintiff was informed by Onyszczak that the utility commission had decided to terminate him effective immediately. At the next meeting of the commission plaintiff asked whether he could have his job back and the commission denied his request.

The commission did not publicly announce the reasons for plaintiff's termination. In June 2004 plaintiff was hired as part-time utility clerk with the Village of Wonewoc.

## MEMORANDUM

In his complaint plaintiff claimed that he was terminated from his employment without required due process protections including oral or written notice of the charges, an opportunity to respond or a hearing. Defendants claim that plaintiff was not entitled to these protections because he was an at-will employee. Plaintiff states in his response that he chose not to respond to defendants' argument.

To be entitled to due process protections plaintiff must have a property right in continued employment. Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538 (1985). Plaintiff has not shown he had an entitlement to continued employment pursuant to any statute or ordinance. Accordingly, he was not entitled to any due process protections. Defendants are entitled to judgment as a matter of law on plaintiff's claim that he was deprived of a property right without due process.

In his complaint plaintiff also claims he was deprived of a liberty interest without due process. A government employee's liberty interest is implicated when the government injures the employee's reputation or imposes a stigma that effectively forecloses him from future employment opportunities. Ratliff v. City of Milwaukee, 795 F.2d 612, 625 (7th Cir. 1986). The reasons for plaintiff's termination were not made public and he was able to find other employment. The undisputed facts do not establish that plaintiff's liberty interest was implicated. Accordingly, he was not entitled to any due process protections. Defendants' motion for summary judgment on this claim will be granted.

Plaintiff claims that he was retaliated against because of his protected speech. Whether an employee's speech is protected by the First Amendment is determined by the two-part test provided in Pickering v. Board of Education, 391 U.S. 563 (1968). The Court must first determine whether the employee spoke as a citizen upon

matters of public concern. If the speech addresses a matter of public concern, the Court must then balance the employee's interest in commenting upon such matter and the employer's interest in efficient public services.

In Connick v. Meyers, 461 U.S. 138, 147-148 (1983), the United States Supreme Court held as follows:

> We hold only that when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters of only personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior...
>
> Whether an employee's speech addresses a matter of public concern must be determined by the content, form and context of a given statement, as revealed by the whole record. In this case, with but one exception, the questions posed by Myers to her coworkers do not fall under the rubric of matters of "public concern."

The United States Court of Appeals for the Seventh Circuit has held that the content of the speech is the most important factor to consider in determining whether it touches on matters of public concern. Wainscott v. Henry, 315 F. 3d 844, 849 (7th Cir. 2001). In Wainscott, the Court found that an employee's statements about the city management's alleged incompetence raised an issue of public concern not a private interest. The Court noted that Wainscott had no personal or pecuniary interest in the management of the city as a whole.

Plaintiff argues that two statements in his April 1, 2004 e-mail to Rudig are speech protected by the First Amendment. The first statement reads as follows, "I wanted to let you know that I was disappointed with your position that the requested one day training on Collection Techniques was not necessary .... We had hoped that not only would the training itself be of benefit but would also give us a chance to talk with other organizations attending to see what other collection techniques were being used by them."

The Court first addresses the content of this speech. The speech is a personal complaint that his request for a one-day training was denied. At the end of this e-mail plaintiff said "I am really trying to understand the reasoning." In his deposition he stated, "I felt it was important for us to attend things that helped reduce the cost to the citizens of the community." In his e-mail, however, he does not address how the attendance at the seminar would benefit the public.

Plaintiff's speech relates to the denial of his personal request to attend a seminar which is a classic personnel struggle and not a matter of public concern. Brooks, et al. v. University of Wisconsin Board of Regents, et al., No. 04-3308, 2005 WL 1023025, at *3 (7th Cir. April 28, 2005). Unlike the plaintiff in Wainscott, plaintiff did have a personal and pecuniary interest in attending the training seminar.

In looking at the form of the speech, the Court notes that it was made in an e-mail to one of the utility commissioners. This does not lend a "public air to the form of these complaints." Breuer v. Hart, 909 F.2d. 1035, 1038 (7th Cir. 1990).

This speech was made in the context that plaintiff had been a denied a request to attend a training seminar that he personally wanted to attend. As he states in his first e-mail he wanted to understand the reasoning behind the denial. Plaintiff's second e-mail concerned only his personal conflicts with Commissioner Rudig. Considering the content and form of this speech the Court concludes as a matter of law that it does not concern a matter of public interest.

Plaintiff also contends that the following statement in his e-mail to Rudig is protected speech:

> One final point I would like to understand: I don't understand why its okay to pay a lineman $154.00 extra per week to get him to stay with the city but not be able to afford a one-time payment of $180.00 for a one-time training day for two employees in the office.

The content of this speech is a personal complaint over a spending choice by the Commission. Plaintiff wants to know why they paid someone else extra pay and did not grant his request to attend a seminar. There is nothing in this speech to indicate that plaintiff was complaining about the misuse of public funds as he now suggests in his deposition. Rather, the speech concerned an internal personnel matter.

This speech was also contained in an e-mail to one of the commissioners after his request for funding to attend a seminar was denied. It was made in the context of plaintiff's seeking the reasoning for the denial of his request. Considering the content, form and context of this speech the Court concludes that this speech does not address a matter of public concern.

Plaintiff spoke not as a citizen upon matters of public concern but instead as an employee upon matters of only personal interest. Connick v. Meyers, 461 U.S. at 147. Since plaintiff's speech did not address a matter of public concern, the Court does not reach the second prong of the analysis which would require a balancing of interests. Plaintiff's speech was not protected by the First Amendment.

Since plaintiff's speech was not protected by the First Amendment he cannot claim that he was terminated in retaliation for his protected speech. See Kuchenreuther v. City of Milwaukee, 221 F.3d 967, 974 (7th Cir. 2000). As a matter of law defendants are entitled to judgment in their favor on plaintiff's First Amendment claim and their motion for summary judgment will be granted.

ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 16th day of May, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge