

3. In or about March 2018, it came to light that the City would be facing severe problems caused by provisions in a collective bargaining agreement between the City and the labor union representing the superior officers in the City's Police Department. The collective bargaining agreement would result in Police Department captains earning an average \$432,295 per year, with similarly high earnings for other ranking officers.

4. Thereafter, Jajuga, the Mayor of Methuen, and Tulley's stepson, James McCarty, a City Councilor for Methuen, began to publicly disagree about how to address the economic consequences caused by the superior officers' agreement. McCarty supported reductions to the City's budget, which would have led to layoffs of police officers, and a reorganization of the Police Department, which would have reduced the number of captains. Jajuga's son is a captain in the Methuen Police Department. He opposed McCarty's proposals. Rather than reorganize the budget and police department, Jajuga entered into a memorandum of understanding (MOU) with the superior officers union to amend the collective bargaining agreement while maintaining significant salary increases. McCarty opposed funding the MOU.

5. Jajuga did not promote Tulley as of July 1, 2018, as Jajuga and McCarty continued to disagree about how to address the superior officers' collective bargaining agreement.

6. Nonetheless, both Jajuga and an associate he hired as a consultant, Frank McCann, told Tulley that Jajuga would promote him to Superintendent if McCarty supported Jajuga's positions on the superior officers' agreement.

7. McCarty continued to oppose Jajuga's positions on the superior officers' agreement and Jajuga subsequently took no action to promote Tulley.

8. In or about October 2018, Tulley spoke with Jajuga about why no action had been taken on his promotion. Jajuga replied that there was no reason to reward people who shit on him.

9. In February 2019, Tulley found a hidden security camera that had been installed in his office, which was located in the basement underneath the Methuen Police Department. The Chief of Police had no knowledge of the camera being installed. The camera was installed at the direction of Jajuga.

10. In May 2019, two other Methuen employees were promoted to position of Superintendent in the DPW. No action was taken to promote Tulley at that time and no action has been taken to promote Tulley since that time.

11. Tulley performs the duties of a Superintendent and is paid out of a line item for the Superintendent position in the city budget. The Building Maintenance Foreman position in which he officially still works is no longer a part of the city budget. While Tulley performs the duties of a Superintendent, he makes \$30,000 less per year than a Superintendent.

12. Jajuga is the City's appointing authority and has the sole authority to promote Tulley to Superintendent.

13. By preventing Tulley from being promoted to Superintendent and enabling the installation of a hidden camera in Tulley's office in retaliation for McCarty's political speech and political actions, Jajuga has violated Tulley's rights under the First

Amendment to the United States Constitution. Jajuga's actions were motivated by Tulley's association with McCarty, his stepson, and McCarty's speech.

14. Jajuga also acted with actual malice towards Tulley, caused by his anger at McCarty's political speech and actions, and intentionally interfered with Tulley's advantageous relations with the City by preventing his promotion to Superintendent.

II. PARTIES

15. Plaintiff Daniel Tulley, is a resident of Methuen, Massachusetts. He is an employee of the City of Methuen.

16. James Jajuga is the Mayor of the City of Methuen.

III. JURISDICTION AND VENUE

17. Jurisdiction is invoked in this Court pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

18. This Court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. § 1367(a).

IV. STATEMENT OF FACTS

19. Tulley has been employed by Methuen for 26 years. For the last three years he has been employed as the Building Maintenance Foreman in the Building Maintenance division of the Department of Public Works (DPW).

20. In or about early 2018, Methuen created three new Superintendent positions within the DPW to take effect July 1, 2018. These positions were Superintendent of Sewer Collection System, Superintendent of Vehicle Maintenance, and Superintendent of Building Maintenance.

21. The Director of DPW at the time, Pat Bower, informed Tulley that he would be promoted to the position of Superintendent of Building Maintenance and that the three new Superintendent positions would be filled when a new city budget took effect July 1, 2018.

22. At a Methuen City Council meeting prior to July 1, 2018, Bower stated that he intended to promote an electrician in the DPW to the Superintendent of Building Maintenance position. He was referring to Tulley. At the conclusion of the meeting, Jajuga congratulated Tulley on the anticipated promotion.

23. In early 2018, it also came to light that a provision in the collective bargaining agreement between Methuen and the labor union representing the superior officers in the City's Police Department was going to result in the Police Department's captains earning an average salary of \$432,295 per year, far above what they had previously been earning, as well as significant increases for lieutenants and sergeants. This was a dramatic and unprecedented increase in salary for superior officers. Jajuga was aware of this issue as of March 2018.

24. Dealing with the dramatic salary increases for superior officers became a significant political issue in Methuen as it was understood that paying the superior officers in the manner required by the collective bargaining agreement would result in a budgetary shortfall for Methuen. The issue was closely followed by the media and discussed by the citizens of Methuen.

25. In or about June 2018, there were discussions involving Jajuga and the City Council regarding how to address this issue. During these discussions, Tulley's stepson, James "Jimmy" McCarty, the City Councilor for the Central District of

Methuen, indicated that he was going to propose laying off five captains in the Police Department in order to avoid a budgetary shortfall.

26. Jajuga's son is a captain in the Methuen Police Department. On July 10, 2017, while contract negotiations with the superior officers union were ongoing, the number of police captains increased from three to five. Jajuga's son was promoted to captain at that time.

27. In or about July 2018, Jajuga and the union representing the superior officers entered into a Memorandum of Understanding (MOU) that resulted in superior officers being paid less than the amounts required by the collective bargaining agreement but nonetheless raising their earnings by nearly 19 percent during the first year of the MOU, and about 25 percent over two years.

28. Jajuga did not, as promised, promote Tulley on or about July 1, 2018, even though a new City budget was passed. Jajuga also did not fill the other new Superintendent positions at this time.

29. Subsequently, job postings for the three positions appeared and Tulley bid on the Superintendent of Building Maintenance position. However, no action, including job interviews, was taken towards filling the positions.

30. While the City Council and the Mayor continued to dispute how to address issues created by the superior officers' agreement, Frank McCann asked Tulley to take a drive with him. McCann is an associate of Jajuga who was hired by the Mayor as a consultant to act as an overseer at the DPW.

31. Tulley accepted the invitation and, during the drive, McCann, acting as Jajuga's agent, stated that if McCarty supported Jajuga's positions on the superior officers' matter, then the Superintendent positions in the DPW could get filled.

32. In July and August 2018, Jajuga requested that the City Council fund the MOU. He directed the City to start paying the superior officers, including his son, pursuant to the MOU, even though the City Council had not voted to fund the MOU.

33. The City Council did not approve funding the MOU. Instead, the legislative body tabled a vote on the issue. McCarty voted against tabling the MOU and stated that the MOU should not be funded and the City Council should reject it.

34. At around the same time, the City Council voted to cut more than \$1.8 million in funding from the Police Department budget as part of the City's \$167 million FY2019 budget. Jajuga expressed that he wanted the City Council to reinstate the \$1.8 million in order pay for police salaries. McCarty stated that he did not intend to vote to return the money to the police budget.

35. In September 2018, McCarty voted in favor of a proposed ordinance to reorganize the rank structure of the Police Department. This proposal eliminated captain and lieutenant positions, and restored those officer as sergeants or patrol officers. The proposed ordinance did not pass. During the City Council meeting on this proposal, McCarty stated that the MOU that Jajuga wanted the City Council to fund did not go far enough to address budget issues.

36. Jajuga continued to pay superior officers pursuant to the unfunded MOU. The City Council feared that compliance with the MOU would force the City to run out of Police Department money by February 2019 and lead to layoffs.

37. In October 2018, Tulley and Jajuga separately attended a fishing derby. Tulley asked Jajuga what was happening with the Superintendent promotions. Jajuga said that it would get done. He also said that McCarty was going to lose his next election if he did not fund the MOU or return to the Police Department budget the \$1.8 million that had been cut.

38. Later in October 2018, McCann's wife, Andrea McCann, said to Tulley that if McCarty would vote to approve the MOU, a \$20,000 fundraiser could be held to benefit McCarty. McCarty continued to refuse to vote to approve the MOU.

39. In December 2018, McCarty continued to make statements indicating that he would not support funding the MOU or restoring the \$1.8 million to the Police Department budget.

40. At a Christmas tree lighting ceremony in early December 2018, Tulley again asked Jajuga about the Superintendent position. Jajuga said he would get back to him.

41. Later in December, Tulley spoke to Jajuga at City Hall. Tulley again asked about the Superintendent positions. Jajuga indicated that his son would be hurt by the positions that McCarty was taking on the City Council and asked why he would reward people who "shit" on him.

42. In early February 2019, the Massachusetts Office of the Inspector General (IG) issued a report that found, *inter alia*, that the Methuen superior officers' MOU was unenforceable. Shortly after the issuance of the IG report, Jajuga ceased paying superior officers at the rates set forth under the MOU. Instead, officers were paid at the rates they

were receiving prior to implementation of the controversial pay raises under the collective bargaining agreement.

43. After Jajuga announced that he would cease paying superior officers at the rates set forth under the MOU, McCarty proposed adding \$1.2 million back to the Police Department Budget. Jajuga made it known that he wanted \$1.5 million added back to the budget.

44. On or about February 6, 2019, the City Council voted to add \$1.2 million back into the Police Department budget, rather than the \$1.5 million requested by Jajuga.

45. On or about February 27, 2019, Tulley became aware of a video camera that had been installed in his office, which was located in the basement of the Methuen Police Station. The camera was hidden in a box and was recording. It was not intended to be seen. The Chief of the Police Department stated that he was not aware of the camera and had not ordered that it be installed. Al Donovan, a private investigator, subsequently admitted to having installed the camera. Based upon understanding and belief, the camera was installed at the behest of Jajuga in order to secretly record Tulley. The camera was installed in retaliation for McCarty making public statements and taking public votes on political issues that are in opposition to Jajuga's positions on those issues.

46. On or about April 2, 2019, the City Council again refused to add additional money to the Police Department budget that had been requested by Jajuga.

47. On or about May 7, 2019, the City Council voted to take \$400,000 from the City's free cash account to help pay police personnel. McCarty voted against the appropriation from free cash and spoke out forcefully against the action taken by the City Council.

48. In May 2019, the Mayor filled two of the three DPW Superintendent positions budgeted for July 1, 2018. The one Superintendent position unfilled was the Building Maintenance position Jajuga promised repeatedly to Tulley. The two individuals who were promoted to Superintendent in May 2019 were not interviewed prior to being promoted.

49. As of today, Tulley has still not been promoted to Superintendent. No announcement has been made that the position will not be filled. The most recent city budget includes a line item for this position. There continues to be no line item for the Building Maintenance Foreman position currently held by Tulley. He is paid out of the Superintendent line item. He continues to be paid as a Building Maintenance Foreman, though he performs the job duties of a Superintendent. He makes approximately \$67,000 per year, rather than the approximately \$97,000 he would make as a Superintendent.

50. Jajuga is the City's appointing authority and has the ability to promote Tulley to Superintendent.

51. Jajuga has withheld Tulley's promotion to Superintendent in retaliation for McCarty making public statements and taking public votes on political issues that are in opposition to Jajuga's positions on those issues, as well as for what Jajuga perceives to be Tulley's failure, or lack of effort, to persuade McCarty to support Jajuga's political positions.

52. Jajuga has prevented Tulley from being promoted because of spiteful and malicious feelings he has towards Tulley and McCarty. These spiteful and malicious feelings arise from McCarty making public statements and taking public votes on political issues that are in opposition to Jajuga's positions on those issues and from what

Jajuga perceives to be Tulley's failure, or lack of effort, to persuade McCarty to support Jajuga's political positions.

COUNT I
1st Amendment, U.S. Constitution
42 U.S.C. § 1983

53. Plaintiff re-alleges and incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 through 52.

54. By refusing to promote Tulley to the Superintendent position in retaliation for McCarty making public statements and taking public votes on political issues that are in opposition to Jajuga's positions on those issues, Jajuga has violated Tulley's rights under the First Amendment to the United States Constitution. Jajuga's actions were motivated by Tulley's association with McCarty, his stepson, and McCarty's speech.

55. By ordering that a hidden video camera be installed in Tulley's office in retaliation for McCarty making public statements and taking public votes on political issues that are in opposition to Jajuga's positions on those issues, Jajuga has violated Tulley's rights under the First Amendment to the United States Constitution. Jajuga's actions were motivated by Tulley's association with McCarty, his stepson, and McCarty's speech.

56. These actions were willful and taken with malice towards Tulley.

COUNT II
Tortious Interference with Advantageous Relations

57. Plaintiff re-alleges and incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 through 52.

58. By preventing Tulley from being promoted to Superintendent because of spiteful and malicious feelings he has towards to Tulley and McCarty, Jajuga has intentionally interfered with Tulley's advantageous relations with his employer, the City.

59. Tulley has been harmed by this interference, as he earns a lower salary than he would otherwise earn if he had been promoted to Superintendent.

WHEREFORE, Plaintiff demands trial by jury and requests that this Court enter the following relief:

1. Order that Jajuga promote Tulley to the position of Superintendent of Building Maintenance;
2. Order that Tulley be made whole for all financial losses, including lost pay and benefits, resulting from Jajuga's failure to promote him to the position of Superintendent of Building Maintenance;
3. Order that Jajuga pay Tulley's reasonable attorney fees and costs;
4. Award Plaintiff with punitive damages;
5. Such other relief as this Court deems just and appropriate.

Respectfully submitted,

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