

**FILED
04-27-2021
John Barrett
Clerk of Circuit Court
2020CV005352**

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

ALFONSO MORALES,

Petitioner,

and

Case No. 20-CV-5352
Case Code 30607

CITY OF MILWAUKEE,

and

BOARD of FIRE AND POLICE COMMISSIONERS

Respondents.

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

Franklyn M. Gimbel, being first duly sworn, on oath deposes and says:

1. I am one of the attorneys representing Petitioner Alfonso Morales in the captioned matter.

2. Subsequent to the Respondent Board of Fire and Police Commissioners' (FPC) summary removal of Petitioner as Chief of Police on August 6, 2020, and its demotion of him to Captain, Petitioner notified Respondents and filed the instant action, pursuant to Wis. Stat. sec. 62.50, seeking court review of the legality of the FPC's action, reversal and reinstatement of Morales as Chief of Police.

3. After considering the briefs and arguments of counsel, submitted by my firm on behalf of the Petitioner Morales, and by the Milwaukee City Attorney's Office on behalf of the Respondents City of Milwaukee and its FPC, the Hon. Christopher Foley, Circuit Court Judge, issued a decision and order on December 18, 2020, reversing the FPC's action.

4. As a result of the FPC's illegal removal of him as Police Chief, Petitioner Morales felt compelled to resign from the Police Department and take retirement to avail himself of the economics associated with the Chief's job against the position of Captain. Petitioner's decision to take early retirement following his removal as Chief ostensibly influenced the City Attorney to oppose the return of Chief Morales to the position taken from him by the FPC in its flawed decision to remove and demote him.

5. Following receipt of Judge Foley's decision and order, I contacted opposing counsel at the City Attorney's Office to inquire about arrangements for Petitioner to promptly resume his duties as Chief of Police and to set a time for his return to work as Chief.

6. Counsel for Respondents indicated to me that there could not be an immediate return and reinstatement of Petitioner Morales to work as Chief at the Police Department and that he should not show up for work at the Police Administration Building.

7. Respondents requested that Chief Morales hold off on physically returning to work and resuming his duties as Chief until the FPC and City considered

which way they would proceed, *i.e.*, a return to work or a financial settlement, including a buy-out of the remainder of Petitioner's contract.

8. In good faith, not wanting to provoke an unnecessary confrontation at the Police Administration Building with the acting chief, and not wanting to cause discord within the Department or public embarrassment to the Police Department, Petitioner, in consultation with me, acceded to the City's request to delay his return to work as Police Chief.

9. I requested that a meeting with representatives of the Respondents be promptly held, to finalize in which direction things would take; and if a financial settlement and contract buy-out proposal was not put forth, to agree to a date when Petitioner would return to work as Chief of Police. This meeting was held at my office at the end of December 2020.

10. Following this meeting, I did not receive any proposal for settlement or a specific return to work date from the Respondents, so on January 17, 2021, I sent a letter to counsel for Respondents requesting a decision, one way or the other. Counsel acknowledged receipt of my letter and advised me that he would be in touch.

11. Neither I nor my client received any decision, specific return to work date or alternative offer for settlement and buy-out from Respondents, following my letter of January 17, 2021.

12. I learned from news media accounts in mid-February, that there was considerable disarray and disfunction with the Respondent FPC, as well as discord and disagreement between certain members of the FPC and the City Attorney's Office.

13. I contacted counsel for the Respondents and learned that the FPC would be retaining private counsel to represent it going forward regarding Chief Morales' situation.

14. My colleague, Raymond Dall'Osto, thereafter wrote to Attorney Cade and spoke with him in the latter part of February 2021, trying to establish "who was on first" as to representing the Respondents, and to set a specific return to work date for Chief Morales, among other things.

15. At the end of February 2021, Attorney Cade orally indicated to Attorney Dall'Osto that, while he could not speak on behalf of, or as counsel representing the Respondent City of Milwaukee, that he, as newly-retained counsel for the Respondent FPC, might be able to establish a specific return to work date for Petitioner Morales later in March of 2021.

16. Attorney Dall'Osto advised Attorney Cade in writing on March 2, 2021, that Chief Morales is ready and willing to return to the Chief's job this month.

17. Attorney Dall'Osto reiterated Petitioner's availability and willingness to return to work as Chief to Attorney Cade on March 9, 2021, and again requested a date certain for Morales to show up and resume his duties as Chief of Police.

18. Attorney Cade responded to Attorney Dall'Osto that he was waiting to hear from a city pension person and would be in touch.

19. On March 23, 2021, Attorney Cade advised my office that there were impediments to Petitioner returning to work as Chief of Police, based upon what city pension personnel had advised Respondents' counsel.

20. My office requested clarification from Respondents' counsel (both City Attorney's office and Attorney Cade) as to how this could be so, and why and what pension concerns would prevent the Petitioner from returning to work as Chief of Police in March 2021.

21. My office contacted the City of Milwaukee Employee Retirement System (ERS), and requested a meeting with ERS Executive Director, and the Petitioner (who is an ERS member and beneficiary) and his legal counsel, in order to get to the bottom of whether there were any pension plan concerns or impediments that would prevent the Petitioner from being able to return to work as Chief of Police at this time.

22. An in-person meeting with ERS Director Jerry Allen occurred on April 15, 2020. At that time Mr. Allen explained what options are available for the Petitioner to return to work as Chief of Police now, and the relevant numbers that would return him to the same position he was in before his summary removal as Chief without due process on August 6, 2021.

23. Mr. Allen advised Petitioner, me, and co-counsel present that at this time, there is no legal reason or impediment from a pension perspective that prevents the Respondents from honoring Judge Foley's decision overturning the FPC's action, and to set a date certain for Chief Morales to return to work and resume his duties as Chief of Police.

24. Mr. Allen advised us that the fact that Chief Morales had taken retirement after the FPC's illegal removal of him in August 2020 would not preclude him from returning to his position now and serving as Chief of Police. Past precedent includes

when Robert Ziarnik retired from the Police Department and was subsequently appointed as Chief of Police some months later.

25. The discord, distrust and uneasy stand-off that currently exists at City Hall between the City of Milwaukee, its FPC and the City Attorney's office as to whether or not to honor Judge Foley's Dec. 18, 2020, order is no excuse or good reason for continued delay and Respondents' inaction and disobedience of the Court's order.

26. Petitioner and his legal counsel have tried mightily to resolve this matter in an honorable and amicable manner, and to get Chief Morales back to work, as no settlement and buy-out has been proposed by Respondents.

27. Local media reported in mid-April 2021 that the Milwaukee Common Council approved retaining Attorney Cade to assist the City Attorney's office in litigation regarding the Petitioner.

28. The news article in the April 13, 2021 *Milwaukee Journal Sentinel* states, in pertinent part:

The Milwaukee City Attorney's Office will have help from an outside law firm to represent the city in its ongoing legal entanglements with ousted Police Chief Alfonso Morales, under a measure approved by the Common Council Tuesday.

The resolution allows the City Attorney's Office to hire Milwaukee-based Cade Law Group LLC at a rate of \$350 per hour for the services of attorney Nate Cade and \$325 per hour for the services of attorney Carlos Pastrana.

* * * * *

City Attorney Tearman Spencer acknowledged in a court filing that Morales was denied due process in August, when the Milwaukee Fire and Police Commission unanimously voted to demote him to captain.

The commission's decision prompted Morales to retire, sue and request a judicial review of the decision.

Milwaukee County Circuit Judge Christopher Foley called the commission's process "fundamentally flawed" when he reversed the commission's decision in December.

Given Foley's decision, the legislation states that the city "anticipates future claims being brought" by Morales against the city.

The commission and City Attorney's Office each blamed each other for the faulty process leading up to Morales' ousting.

Cade previously told the council that reasons for hiring him included the Fire and Police Commission's "belief that they have a conflict in regards to representation."

A true and correct copy of this article is attached hereto as Exhibit A.

29. Given the lack of response by Respondents and their failure to allow Petitioner to return to work, good cause exists for the Court to order that Chief Morales return to work forthwith and that Respondents put him back into the position he was prior to the FPC's illegal action, and reinstate and reimburse him for the difference in salary, benefits, individual retirement contributions and other sums, including all of his attorneys' fees and costs that have been expended since August 6, 2020.

30. To accomplish this, my office has prepared the Order that accompanies Petitioner's Motion and this Affidavit, which I respectfully request that the Court review, consider and sign per the five (5) day rule.

Dated this 26th day of April, 2021.

Electronically signed by Franklyn M. Gimbel
FRANKLYN M. GIMBEL, Affiant

Subscribed and sworn to before me
this 26th day of April, 2021.

Electronically signed by Brianna J. Meyer
Notary Public, State of Wisconsin
My commission: is permanent

a/emp/morales/p/fmg aff 2021-04-26

milwaukee journal sentinel

MILWAUKEE COUNTY

Milwaukee Common Council approves outside law firm to assist City Attorney's Office in Morales litigation

Alison Dirr Milwaukee Journal Sentinel

Published 10:48 a.m. CT Apr. 13, 2021 | Updated 4:23 p.m. CT Apr. 13, 2021

The Milwaukee City Attorney's Office will have help from an outside law firm to represent the city in its ongoing legal entanglements with ousted Police Chief Alfonso Morales, under a measure approved by the Common Council Tuesday.

The resolution allows the City Attorney's Office to hire Milwaukee-based Cade Law Group LLC at a rate of \$350 per hour for the services of attorney Nate Cade and \$325 per hour for the services of attorney Carlos Pastrana.

The agreement ends Dec. 31 and includes a cap of \$40,000 for the law firm's services, unless otherwise agreed to in writing.

Ald. Michael Murphy voted against the resolution.

"After speaking to a number of people and concluding that the City Attorney's Office has already admitted guilt in terms of the violation by the Fire and Police Commission, reaching a settlement shouldn't be costing another \$40,000 in outside legal staff," Murphy told the Journal Sentinel after the meeting.

City Attorney Tearman Spencer acknowledged in a court filing that Morales was denied due process in August, when the Milwaukee Fire and Police Commission unanimously voted to demote him to captain.

The commission's decision prompted Morales to retire, sue and request a judicial review of the decision.

Milwaukee County Circuit Judge Christopher Foley called the commission's process "fundamentally flawed" when he reversed the commission's decision in December.

Ex. A

Given Foley's decision, the legislation states that the city "anticipates future claims being brought" by Morales against the city.

The commission and City Attorney's Office each blamed each other for the faulty process leading up to Morales' ousting.

Cade previously told the council that reasons for hiring him included the Fire and Police Commission's "belief that they have a conflict in regards to representation."

The powerful civilian oversight commission has the authority to hire and fire police and fire chiefs, independently investigate and monitor citizen complaints, discipline employees and more.

In February, the council waived conflicts of interest Cade Law Group has in relation to representing the city, given three lawsuits it has against the city. Mayor Tom Barrett signed the legislation.

The council also unanimously supported:

- A measure stating the city's support for proposed passenger rail service improvements between the Twin Cities and Chicago, via Milwaukee.

- A measure to bring electric scooters back to Milwaukee this summer as part of a second pilot program that would run through Dec. 31.

Contact Alison Dirr at 414-224-2383 or adirr@jrn.com. Follow her on Twitter @AlisonDirr.