

Procedure 56(c) (Document No. 27, filed January 31, 2002); Plaintiffs' Opposition to Defendant Charles P. Sexton, Jr.'s Motion for Summary Judgment (Document No. 28, filed February 21, 2002); and all additional filings related to said Motions, for the reasons set forth in the following Memorandum, **IT IS ORDERED** that the Motions for Summary Judgment are **GRANTED IN PART AND DENIED IN PART**, as follows:

1. The Motion for Summary Judgment of Defendants Springfield Township, Michael LeFevre, Thomas V. Mahoney, Lee J. Janiczek, Michael V. Puppio, Kitty Jurciukonis, Bernard E. Stein, James J. Devenney and Anthony J. Grosso (Document No. 26, filed January 31, 2002) is **GRANTED BY AGREEMENT** of the parties with respect to:

(a) plaintiffs' claims against defendants Lee J. Janiczek, Michael V. Puppio, Kitty Jurciukonis, Bernard E. Stein, James J. Devenney, and Anthony J. Grosso in their individual capacities only¹;

(b) plaintiffs' claims for punitive damages against Springfield Township and the Township government officials sued in their official capacity – Michael LeFevre, Thomas V. Mahoney, Lee J. Janiczek, Michael V. Puppio, Kitty Jurciukonis, Bernard E. Stein, James J. Devenney, and Anthony J. Grosso;

(c) all of plaintiffs' state law claims against Springfield Township and the Township government officials sued in their official capacity – Michael LeFevre, Thomas V. Mahoney, Lee J. Janiczek, Michael V. Puppio, Kitty Jurciukonis, Bernard E. Stein, James J. Devenney, and Anthony J. Grosso;

¹ The Court will issue a separate Order amending the caption of the case in conformity with this Order.

2. The Motion for Summary Judgment of Defendants Springfield Township, Michael LeFevre, Thomas V. Mahoney, Lee J. Janiczek, Michael V. Puppio, Kitty Jurciukonis, Bernard E. Stein, James J. Devenney and Anthony J. Grosso (Document No. 26, filed January 31, 2002), and defendants' request for oral argument on said Motion is **DENIED** in all other respects; and,

3. Defendant, Charles P. Sexton, Jr.'s Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56(c) (Document No. 27, filed January 31, 2002) is **DENIED**.

IT IS FURTHER ORDERED that a final pretrial conference is **SCHEDULED** for May 17, 2002, at 4:00 P.M. in Chambers, Room 12613, U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania.

The agenda for the Final Pretrial Conference is as follows:

- A. Stipulations of counsel aimed at expediting the trial;
- B. Issues to be presented at trial;
- C. Objections to proposed jury voir dire questions, proposed jury instructions, proposed jury interrogatories, proposed findings of fact and conclusions of law; and,
- D. Motions in limine.

The parties may add matters to the agenda for the Final Pretrial Conference by letter to the Court (Chambers, Room 12613), no less than two (2) days in advance of the Conference.

MEMORANDUM

I. BACKGROUND

This litigation arises out of an earlier case brought before this Court under the caption Todd B. Sontagh et al. v. Springfield Township et al., Docket No. 99-CV-2071. In that case, plaintiffs, two police officers employed by the Springfield Township Police Department ("the

Department”), alleged that they were victims of a pattern of sexual harassment within the Department. The parties to that litigation achieved an out-of-court settlement, and, on February 29, 2000, the Court issued an Order pursuant to Local Civil Rule 41.1(b) dismissing the action with prejudice.

Plaintiffs in this case, John W. Francis and P. Andrew Trautmann, who were named individually as defendants in the Sontagh litigation, were also police officers in the Springfield Township Police Department. It is undisputed that both Francis and Trautmann were separated from their employment with the Department as a direct result of their alleged involvement in the pattern of sexual harassment at the center of the Sontagh litigation. Specifically, Francis, who was a lieutenant and second-in-command in the Department, resigned from his position on December 17, 1998. Trautmann, who was a sergeant in the Department, was terminated on December 29, 1998.

On December 14, 2000, plaintiffs filed a five-count Complaint naming as defendants, Springfield Township, Township Manager Michael LeFevre, and the members of the Township Board of Commissioners: Thomas V. Mahoney, Lee J. Janiczek, Michael V. Puppio, Kitty Jurciukonis, Bernard E. Stein, James J. Devenney and Anthony J. Grosso (referred to collectively as “Township defendants”). The Complaint stated claims against each of the individual Township defendants in both their official and individual capacities. Plaintiffs also named as a defendant Charles Sexton, Jr., a private citizen, who is the Chairman of the Springfield Township Republican Party.

In the Complaint, plaintiff John W. Francis asserted a claim under 42 U.S.C. § 1983, alleging that he was constructively discharged from his employment and was denied his

constitutional right to procedural due process. With respect to Sexton, Francis alleged that he conspired with the Township defendants to deny him his constitutional rights. Francis also asserted two state claims: one against Sexton for intentional interference with contractual relations, and one against all defendants for intentional infliction of emotional distress. Plaintiff Lois L. Francis,² who is married to plaintiff John W. Francis, asserted a claim against all defendants for loss of consortium.

Plaintiff Trautmann asserted a claim under § 1983, but against only the Township defendants. Trautmann's claim alleges that he was terminated from his employment without being afforded his constitutional right to procedural due process.

In the filings with respect to the pending motions, plaintiffs have agreed to dismiss all of their individual capacity claims against the Township defendants with the exception of defendants LeFevre and Mahoney. Plaintiffs have additionally agreed to the dismissal of all state-law claims and punitive damages claims against Springfield Township and the Township defendants sued in their official capacities.

The parties' extraordinarily detailed – and lengthy – filings with respect to the pending summary judgment motions cast the facts and circumstances of this case in two vastly different lights. In short, and without belabored citations to the extensive record, those different versions of the case are as follows:

Defendants allege that Trautmann, while employed by the Department, persistently engaged in inappropriate, sexually-tinged, behavior within the workplace, and, on several occasions, harassed, both verbally and physically, his fellow and subordinate officers. Before he

² Unless otherwise indicated, all references to Francis are to plaintiff John W. Francis.

was terminated, Trautmann was given substantial notice of the allegations about his conduct, and he had a number of opportunities to respond to those allegations. Francis, defendants assert, not only knew about the sexually inappropriate behavior of officers under his command, but also allowed that behavior to continue, and, in some instances, even participated in that behavior. His resignation from his job, moreover, was completely voluntary. In sum, defendants' position is that neither Trautmann nor Francis has produced any evidence that they were denied their rights to procedural due process.

Plaintiffs, on the other hand, assert that Trautmann and Francis were victims of a long-ranging plan between defendant Sexton, the Chairman of the Township Republican Party, and members of the Township government to "get rid" of Francis, thereby allowing Township police officers more loyal to Sexton to obtain leadership positions within the Department. The allegations of the Sontagh lawsuit gave Sexton and the Township defendants an opportunity to accomplish that goal. For that reason, and also so the Township could avoid a potentially embarrassing sexual harassment scandal, both Francis and Trautmann were "railroaded" out of the Department and denied their constitutional rights to procedural due process.

II. DISCUSSION

A. GENERAL

The two motions raise numerous arguments as to why plaintiffs' claims must fail. Nevertheless, upon its review of all the filings and the record, the Court concludes that defendants have not met their burden of showing "that there is no genuine issue as to any material fact and that [defendants are] entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The Court does not deem it necessary to identify each genuine issue of material fact.

Rather, the Court finds it sufficient to merely state its conclusion that the filings and record demonstrate genuine issues of fact with respect to nearly³ every element of every one of plaintiffs' claims.

Notwithstanding this conclusion, the Court issues this brief Memorandum to address more thoroughly two of the Township defendants' many arguments which (1) urge the Court to abstain from exercising jurisdiction over this matter pursuant to the doctrine of Younger v. Harris, 401 U.S. 37 (1971), and (2) assert the defense of qualified immunity. As discussed below, the Court concludes that neither of defendants' arguments justify granting defendants' motions for summary judgment.

B. YOUNGER ABSTENTION

The Township defendants argue that because plaintiff Trautmann has entered into arbitration proceedings seeking reinstatement to his employment position with the Department, and because those proceedings are still pending, this Court should abstain under the Younger doctrine. As the Third Circuit has recently explained, the Supreme Court has established a three-prong test to determine whether that doctrine requires a district court to abstain. "Abstention is appropriate when: (1) there is a pending state judicial proceeding; (2) the proceeding implicates important state interests; and (3) the state proceeding affords an adequate opportunity to raise constitutional challenges." Zahl v. Harper, 282 F.3d 204, 209 (3d Cir. 2002) (citing Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982)). The Court concludes that defendants' argument that the Court should abstain in this case fails on both the

³ The exceptions are plaintiffs' claims for punitive damages and plaintiffs' state-law claims filed against the municipal defendants, which, as stated in the above Order, are dismissed by agreement of the parties.

second and third prongs of this test.

With respect to the importance of the interests at stake in the pending arbitration proceedings, the Court acknowledges that the Commonwealth of Pennsylvania, as evidenced by its enactment of a statutory process for arbitration proceedings, see 43 P.S. § 217.1, has an interest in encouraging arbitration of employment disputes. Nevertheless, defendants' argument that this interest rises to the level of the important state interests implicated in the Younger abstention inquiry disregards the principle "that Younger abstention is 'inappropriate if the state proceedings are remedial, rather than coercive.'" Cohen v. Township of Cheltenham, 174 F. Supp. 2d 307, 318 (E.D. Pa. 2001) (quoting ReMed Recovery Care Ctrs. v. Township of Worcester, No. 98-1799, 1998 WL 437272, at *2 (E.D. Pa. July 30, 1998)) (further citations omitted). In this case, Trautmann has entered into arbitration proceedings for solely remedial purposes – that is, to remedy what he believed was a termination of employment in violation of a collective bargaining agreement. Thus, although there is a state interest in encouraging arbitration, the pending arbitration proceedings in this case do not invoke any "coercive" state interest.

Defendants' argument that the Court should abstain also fails to recognize that the arbitration proceedings will not afford Trautmann "an adequate opportunity to raise constitutional challenges." Zahl, 282 F.3d at 209. As plaintiffs point out, the arbitrator who heard Trautmann's grievance found in Trautmann's favor based on his conclusion that the Township had denied Trautmann's rights to procedural due process. See Pls.' Ex. WW at 31 (arbitrator's conclusion that "the Township has failed to adequately notify [Trautmann] of the claims and charges against him or to explain the evidence of the claims and charges which

resulted from the investigation of sexual harassment, or provide an adequate opportunity to present a response to the charges against him by individuals and the Township”). On the Township’s appeal of the arbitrator’s decision, however, the Court of Common Pleas held, and the Commonwealth Court affirmed, that the arbitrator should not consider Trautmann’s due process claim, but, rather, should limit his decision to the merits of Trautmann’s termination. See Pls.’ Ex. JJJ at 6-7. As a result of the Commonwealth Court’s holding, the arbitrator, on remand, may not address Trautmann’s claims that he was denied his constitutional right to procedural due process. The pending arbitration proceedings thus do not provide Trautmann an adequate opportunity to litigate his constitutional challenges.

For these reasons, the Court concludes that Younger abstention is not appropriate in this case. Additionally, to the extent that defendants urge the Court to exercise a discretionary “deferral” of jurisdiction until the completion of the arbitration proceedings, the Court finds no good cause for such a deferral and declines to so exercise its discretion.⁴

C. QUALIFIED IMMUNITY

The Township defendants argue that the remaining defendants sued in their individual capacities – LeFevre and Mahoney – are entitled to qualified immunity. The Court’s evaluation of defendants’ argument is a two-step process. See Bennett v. Murphy, 274 F.3d 133, 136 (3d Cir. 2002) (citing Saucier v. Katz, 533 U.S. 194 (2001)). First, the Court “determine[s] whether

⁴ Defendants’ citation to Grove v. Emison, 507 U.S. 25, 32 n.1 (1993) in support of such a deferral is off the mark. The cited portion of Grove involves a discussion of a Pullman deferral. See id. (citing Railroad Comm’n of Tex. v. Pullman Co., 312 U.S. 496, 501-02 (1941)). The Pullman doctrine counsels that district courts “should not prematurely resolve the constitutionality of a state statute.” Id. This case, of course, involves no issues as to the constitutionality of any state statutes.

the facts, taken in the light most favorable to the plaintiff, show a constitutional violation.” Id. Second, the Court must ask “whether the constitutional right was clearly established.... [t]hat is, in the factual scenario established by the plaintiff, would a reasonable officer have understood that his actions were prohibited?” Id.

With respect to the first step of the analysis, the Court has already stated its conclusion that the facts taken in the light most favorable to plaintiffs could establish violations of plaintiffs’ procedural due process rights. See supra § II.A. With respect to the second step of the analysis, the Court concludes that the record, if viewed in the light most favorable to plaintiffs, demonstrates that defendants LeFevre and Mahoney would have understood that their actions violated plaintiffs’ procedural due process rights as defined by the Supreme Court’s 1985 decision in Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985).

Specifically, as to the alleged constructive discharge of Francis, Mahoney testified in his deposition that the Township’s solicitor told him not to fire anyone as a result of the Township’s sexual harassment investigation. Pls.’ Ex. G at 133. Other evidence establishes that notwithstanding this advice, Mahoney, who, as a Commissioner, had the final say on whether Francis would be terminated, had decided that he wanted to fire Francis before Francis had an opportunity to respond to the charges against him. Pls.’ Ex. K at 85-86. Moreover, LeFevre played a role in the Township’s repeated sending of written interrogatories to Francis, which Francis argues harassed him into submitting his resignation. Pls.’ Ex. G at 149-50.

As to the termination of Trautmann, Mahoney, as stated above, knew that legal counsel advised against any termination. Pls.’ Ex. G at 133. LeFevre provided Trautmann with a notice of potential discipline and pressured him to return a rushed response within twenty-four hours.

Pls' Ex. CC at 150-61. Later, after Trautmann had been terminated, LeFevre stated that Trautmann was "singled out" so that the Township could "cut the losses." Pls.' Ex. XX at Trautmann 0967.

The Court agrees with plaintiffs' argument that, taking these facts as true, defendants LeFevre and Mahoney knew – or should have known – that their actions violated the plaintiffs' procedural due process rights to notice of the charges against them and an adequate opportunity to respond to those charges. See Loudermill, 470 U.S. at 545-46. Accordingly, the Court concludes that defendants LeFevre and Mahoney are not entitled to qualified immunity at this stage of the litigation.

III. CONCLUSION

For the foregoing reasons, the Court grants the two pending motions for summary judgment in accordance with the parties' agreements as identified in the above Order and denies the motions in all other respects.

BY THE COURT:

JAN E. DuBOIS, J.