

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SIMRIL, et al.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 00-5668
	:	
THE TOWNSHIP OF WARWICK, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

AUGUST 13, 2001

Plaintiffs brought this action against the Defendants premised upon the First Amendment of the United States Constitution, 42 U.S.C. sections 1981, 1983, 1985(3), and 1986, common law torts of Interference with Prospective Contractual Relationship, Intentional Infliction of Emotional Distress, Libel and Slander. See Am. Compl. Before this Court are the Defendants' Motions to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6).¹ For the reasons stated, the Motions are DENIED.

I. FACTUAL BACKGROUND

Since the litigation involved in this case is extensive, the Court will give a broad overview of the action.²

¹ Specifically, this Memorandum Opinion deals with Defendants' Motions to Dismiss, docket numbers: 31, 35, 38, 40, 41, 42, 44, 45, 46, 47, 48 and 49. However, the Opinion does not address the Motion to Dismiss filed by the Borough of Ephrata (Dkt. No. 33) because it is addressed in a separate Opinion.

² The Amended Complaint is forty-two pages, contains one hundred and forty-five paragraphs and involves nine Counts. See

The Plaintiffs in this case are: Ronald Z. Simril ("Simril"), a black male who applied for available police officer positions at the Township of Warwick Police Department ("Police Department"), Alfred O. Olsen ("Olsen"), a white male who was the Police Chief of Warwick Township Police Department and Gary A. Hutchinson ("Hutchinson")(collectively "Plaintiffs"), a white male who was Patrol Sergeant of Warwick Township Police Department.³ The Defendants primarily include members of the Board of Supervisors, police officers and personnel of the Township of Warwick. Specifically, the Defendants include:

Township of Warwick ("Warwick Township"):

Board of Supervisors ("the Board"):

Bruce Bucher ("Bucher")- Chairman, Board of Supervisors

Daniel Garrett ("Garrett")- Chairman, Board of
Supervisors until
Dec. 31, 1999

J. Roger Moyer, Jr. ("Moyer")- Township Supervisor

W. Logan Myers ("Myers")- Township Supervisor

Michael Vigunas ("Vigunas")- Township Supervisor

Krawford Kauffman ("Kauffman")- Township Supervisor

Employees:

Daniel Zimmerman ("Zimmerman")- Township Manager

Am. Compl. Also, the action involves six Plaintiffs and eighteen Defendants. Id.

³ Plaintiffs also include the wives of the male Plaintiffs who are Gilma Simril, Marie A. Olsen and Katherine A. Hutchinson. See Am. Compl. The wives are included in this action due to Count XIII Loss of Consortium. Id. at 41.

Matthew Hunt ("Hunt")- Hired by Warwick Township to write a report entitled "A Needs Assessment for the Warwick Township Police Department."

Brenda Gensemer ("Gensemer")- Administrative Assistant

Police Officers:

Edward Tobin ("Tobin")- Detective Sergeant Police Officer

Richard Rhinier ("Rhinier")- Police Officer

Gary Garrison ("Garrison")- Police Officer

Joshua Kilgore ("Kilgore")- Police Officer

Delene Brown ("Brown") - Police Officer

Michael Burdge ("Burdge")- Police Officer

Borough of Ephrata

Robert Ballenger ("Ballenger")- Detective Sergeant
Police Officer for the
Borough of Ephrata

The action consists of an involved conspiracy claim which is premised on the allegation that Simril was not hired as a Warwick Township police officer due to racism and Olsen and Hutchinson were retaliated against by the Defendants for their efforts to hire Simril and combat the alleged racism. Plaintiffs allege that the underpinnings of the failure to hire Simril and the retaliation against Olsen and Hutchinson consisted of a conspiracy carried out from December 1999 until November 2000. The following is a brief time line which constructs the alleged conspiracy:

December 1999 - the hiring committee for the available police officer position included Olsen, Hutchinson, Tobin, Bucher, Zimmerman, Kauffman, and Ballenger. It is alleged that the aforementioned Defendants were cordial to the white

applicants during interviews, but were quiet and had few questions for Simril. When Bucher heard that Simril received the top score, he took back his score sheet and lowered Simril's score. At this time, it is also alleged that Bucher said that a white male applicant named Ochs was his man and told the others to disregard the scores and go with the best interview. Consequently, Ochs was hired for the position and Simril was denied employment.

December 1999 until November 2000 - Bucher, Zimmerman, Tobin, Rhinier, Garrison, Gensemer, Kilgore, Brown and Burdge coordinated, gathered, and manipulated police matters to make it appear as if Olsen and Hutchinson were not properly performing their jobs. Such manipulation was also used to intimidate the men and to use as grounds for their termination.

January, 2000 - the Board told Hunt to investigate and manipulate information about Olsen and Hutchinson in his report, "A Needs Assessment for the Warwick Township Police Department." In furtherance of the conspiracy, Hunt never met with Olsen or Hutchinson, but did meet with their subordinates. Hunt's report contained a personal attack on both Olsen and Hutchinson. Based on Hunt's report, the Board took away Olsen's authority to act and required him to make numerous changes in a short period of time. Also, based on Hunt's report, the Board threatened to terminate Hutchinson's employment.

April 30, 2000 - Garrett, a member of the Board of Supervisors who became a District Justice for the Warwick School District in January 2000, allegedly staged a fake emergency in the District Office and fabricated incidents in order to complain about the job performances of Olsen and Hutchinson.

May 9, 2000 - Brown and Hunt made up an incident to make it appear as if Olsen was late for work. On his way to work, Olsen picked-up photos for Brown and arrived a half hour late. Subsequently, Olsen was reported for lateness.

June 2000 - The Warwick Township Police Department had available police officer positions. The general hiring policy is that the top scorer from the previous interview is automatically eligible for consideration of any new job openings. Thus, because of his previous top score, Simril was entitled to be automatically considered for any new police officer positions. However, the Defendants refused to consider Simril for any of the available police officer positions because he is a black male. At this time, the Defendants included a white male applicant named Brindley into the hiring process, even though Brindley was not one of the top scorers and had been previously disqualified.

July 19, 2000 - At an Executive Session Meeting held to discuss hiring, Bucher, Myers, Vigunas, Moyer and Kauffman conspired to prepare and assist applicant Brindley with the hiring process.

August 2000 - The Defendants hired Brindley for an available police officer position and did not offer Simril the position.

August 1, 2000 - Some Defendants purposefully understaffed themselves and then complained to the Board of Supervisors about being understaffed.

August 2, 2000 - Brown tried to persuade Hutchinson to take her to a car dealership on police time in furtherance of the conspiracy.

August 4, 2000 - Burdge, Rhinier and Tobin reported a one hour scheduling gap directly to the Board of Supervisors.

September 2000 - Burdge accused Hutchinson of a false theft in the police department of seventy-five dollars. Also, at this time, Burdge and Tobin created an overtime scheduling conflict.

September 12, 2000 - Tobin admitted to Olsen and Hutchinson that the Board was trying to terminate them because of their support of Simril.

October 2000 - Plaintiffs allege that the Board of Supervisors are able to hire two new police officers, but are currently waiting to hire until the top ten hiring list expires and they are free of Simril's high rating.

On November 7, 2000, the Plaintiffs filed their original Complaint. In less than twenty-four hours from the filing, Olsen and Hutchinson were put on administrative leave. After Warwick Township conducted its own investigation of

Plaintiffs' allegations, Olsen and Hutchinson received notice of their termination on March 2, 2001. On March 6, 2001, Plaintiffs filed an Amended Complaint. Subsequently, Defendants filed Motions to Dismiss the Amended Complaint. In response to Defendants' Motions to Dismiss, Plaintiffs have filed Motions to Deny Defendants' Motions to Dismiss.

II. DISCUSSION

Due to the nature of this case and the allegations contained in the Plaintiffs' Amended Complaint, the Court begins its discussion of the Defendants' Motions to Dismiss with an analysis of the standard for a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6). Federal Rule of Civil Procedure 12(b)(6) authorizes a court to dismiss an action for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the sufficiency of the complaint.⁴ Friedman v. Lansdale Parking Auth., 151 F.R.D. 42, 43 (E.D. Pa. 1993)(citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Johnsrud v. Carter, 620 F.2d 29, 33

⁴ In deciding a motion to dismiss, courts generally may only consider the allegations included in the complaint, exhibits attached to the complaint, matters of public record and undisputedly authentic documents that the defendant affixes as an exhibit to a motion to dismiss when the plaintiff has based his or her claims on the document. Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993), cert. denied, 510 U.S. 1042 (1994)(citations omitted).

(3d Cir. 1980)). When deciding a motion to dismiss, “[a] court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim.” Id. (citing Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). In general, “[t]he motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted.” 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 321 (2d ed. 1990). As a result, the granting of a Rule 12(b)(6) motion to dismiss “is highly disfavored, and only appropriate ‘where it is certain that no relief could be granted under any set of facts that could be proved.’” Glickstein v. Neshaminy Sch. Dist., No. 96-6236, 1997 WL 660636, at *2 (E.D. Pa. Oct. 22, 1997)(quoting Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990)(citation omitted)).

The standard for a dismissal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) is well settled. “A motion to dismiss pursuant to Rule 12(b)(6) may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief.” Maio v. Aetna, Inc., 221 F.3d 472, 482 (3d Cir. 2000)(quoting In re Burlington Coat Factory Secs. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997)(citation omitted)). The issue in a Rule 12(b)(6)

motion to dismiss “is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” Id. (quoting In re Burlington Coat, 114 F.3d at 1420 (citation omitted)).

When deciding a motion to dismiss, “a court need not credit a complaint’s ‘bald assertions’ or ‘legal conclusions.’” Id. (quoting In re Burlington Coat, 114 F.3d at 1429-30 (citations omitted)). Thus, a court should not accept “‘unsupported conclusions and unwarranted inferences’” as true. Doug Grant, Inc. v. Greate Bay Casino Corp., 232 F.3d 173, 183 (3d Cir. 2000), cert. denied, ___ U.S. ___, 121 S.Ct. 2000 (2001)(quoting City of Pitts. v. W. Penn Power Co., 147 F.3d 256, 263 n.13 (3d Cir. 1998)(citation omitted)). When viewing a Rule 12(b)(6) motion to dismiss, a court must draw on the allegations contained in the complaint in a realistic, rather than a slavish, manner. Id. (quoting City of Pitts., 147 F.3d at 263). “[C]ourts have an obligation in matters before them to view the complaint as a whole and to base rulings not upon the presence of mere words but, rather, upon the presence of a factual situation which is or is not justiciable.” Id. (quoting City of Pitts., 147 F.3d at 263).

Generally, a plaintiff’s complaint must satisfy the general notice pleading requirement of Federal Rule of Civil Procedure 8(a)(2). Rule 8(a)(2) requires that “[a] pleading

which sets forth a claim for relief . . . shall contain a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The main purpose behind Rule 8(a)(2) is to give the defendant adequate notice of the claim asserted against him in order for him to adequately respond. Loftus v. SEPTA, 843 F. Supp. 981, 986 (E.D. Pa. 1994)(citing Conley, 355 U.S. at 47)(citation omitted)).

Consequently, "the more substantively complex the cause of action, the greater the mandate for detail under the Rule." Id. "[I]n order to satisfy the notice pleading requirement for a civil rights action based upon a claim of conspiracy, the complaint 'must contain sufficient information for the court to determine whether or not a valid claim for relief has been stated to enable the opposing side to prepare an adequate responsive pleading.'" Spencer v. Steinman, 968 F. Supp. 1011, 1021 n.15 (E.D. Pa. 1997)(quoting Loftus, 843 F. Supp. at 983-985; Rose v. Bartle, 871 F.2d 331, 366 n.60 (3d Cir. 1989)(citation omitted)).

Thus, the "short and plain" statement provision of Rule 8 is satisfied in the context of a civil rights action based upon a claim of conspiracy only when "the defendant is provided with the degree of particularity that animates the fair notice requirement of the Rule." Loftus, 843 F. Supp. at 988 (citing Conley, 355 U.S. at 47).

In order for the factual allegations in a complaint

alleging a violation of civil rights through a conspiracy to be sufficiently specific and precise to satisfy the fair notice requirement of Rule 8(a)(2), "[t]he plaintiffs must plead with particularity the 'circumstances' of the alleged wrongdoing in order to place the defendants on notice of the precise misconduct with which they are charged.'" Id. at 986 (quoting Rose, 871 F.2d at 366 (citations omitted)). Specifically, "[o]nly allegations of conspiracy which are particularized, such as those addressing the period of the conspiracy, the object of the conspiracy, and certain actions of the alleged conspirators taken to achieve that purpose, will be deemed sufficient.'" Id. (quoting Rose, 871 F.2d at 366 (citations omitted)).

Since the standard used to analyze the Defendants' Motions to Dismiss has been set forth, the Court will now address the allegations contained in the Amended Complaint. The Court finds it helpful to create a listing of the Amended Complaint's paragraphs which specifically address each Defendant and the specific allegations asserted against each individual Defendant. The following is the individualized listing:

**MOYER (Township Supervisor on Jan. 2000)
Amended Complaint**

- ¶33 At all relevant times, Moyer was a supervisor on the Board of Supervisors.
- ¶43 Became a supervisor after Garrett resigned to serve as a District Justice.
- ¶53 Joined the conspiracy to not hire Simril and to retaliate against Olsen and Hutchinson

when he began to serve on the Board in January 2000.

- ¶83 Board of Supervisors knew Garrett had fabricated an emergency to use as a tool of intimidation against Olsen and Hutchinson in furtherance of the conspiracy.
- ¶84 In January 2000, the Board secretly met with Hunt and conspired to include him in the conspiracy against Olsen and Hutchinson.
- ¶85 Hunt agreed to assist the Board in creating a false report.
- ¶88 Hunt's report contained baseless false allegations about Olsen and Hutchinson. Based on Hunt's report, the Board required Olsen to make numerous changes in a short time period and punished Hutchinson by requiring him to work all night shifts.
- ¶89 Based on Hunt's report, the Board took away Olsen's authority to act as police chief and required him to make thirty-seven changes in a short period of time.
- ¶90 July 27, 2000 - the Board accused Hutchinson of falsifying his work schedule. The Board instructed Hutchinson to disobey the orders of Olsen and that he would suffer if he failed to follow their directive.
- ¶96 Present at an Executive Session Meeting on July 19, 2000 where the Board made special arrangements and authorized overtime to pay police officers to assist applicant Brindley in completing the five phases of the hiring process.
- ¶101 The Board secretly met before interviews and decided to disregard the hiring process and hire applicant Brindley for the available position.
- ¶106 Tobin told Olsen and Hutchinson that the Board of Supervisors was trying to terminate their employment because of their support of

Simril.

- ¶107 The Board of Supervisors are waiting to hire two new police officers until Simril's status on the top ten hiring list expires.
- ¶108 The Board continued to threaten to bring adverse action against Olsen if he continued to consider Simril for the two open positions.

**MYERS (Township Supervisor 1999 and 2000)
Amended Complaint**

- ¶30 At all relevant times, Myers was a supervisor on the Board of Supervisors.
- ¶43 Served as a supervisor at all relevant times.
- ¶53 In December 1999, Myers conspired not to hire Simril because he is black and conspired against Olsen and Hutchinson because of their support of Simril.
- ¶57 The Board ignored Olsen and Hutchinson at the Christmas Party.
- ¶67 In December 1999, the conspiracy caused Simril not to be hired and caused Defendants to offer the position to a less qualified white male named Ochs.
- ¶70 December 1999 - November 2000 - the Board had knowledge and allowed secret meetings conducted for the purpose of retaliation against Olsen and Hutchinson.
- ¶71 The Board and police officers instituted efforts to retaliate against Olsen and Hutchinson.
- ¶84 In January 2000, the Board secretly met with Hunt and conspired to include him in the conspiracy against Olsen and Hutchinson.
- ¶85 Hunt agreed to assist the Board in creating a false report.
- ¶88 Hunt's report contained baseless false

allegations about Olsen and Hutchinson. Based on Hunt's report, the Board required Olsen to make numerous changes in a short time period and punished Hutchinson by requiring him to work all night shifts.

¶89 Based on Hunt's report, the Board took away Olsen's authority to act as police chief and required him to make thirty-seven changes in a short period of time.

¶90 July 27, 2000 - the Board accused Hutchinson of falsifying his work schedule. The Board instructed Hutchinson to disobey the orders of Olsen and that he would suffer if he failed to follow their directive.

¶96 Present at an Executive Session Meeting on July 19, 2000 where the Board made special arrangements and authorized overtime to pay police officers to assist applicant Brindley in completing the five phases of the hiring process.

¶101 The Board secretly met before interviews and decided to disregard the hiring process and hire applicant Brindley for the available position.

¶106 Tobin told Olsen and Hutchinson that the Board of Supervisors was trying to terminate their employment because of their support of Simril.

¶107 The Board of Supervisors are waiting to hire two new police officers until Simril's status on the top ten hiring list expires.

¶108 The Board continued to threaten to bring adverse action against Olsen if he continued to consider Simril for the two open positions.

VIGUNAS (Township Supervisor)
Amended Complaint

¶32 Supervisor on the Board of Supervisors at all relevant times.

- ¶43 Served as a supervisor at all relevant times.
- ¶53 In December 1999, Vigunas conspired not to hire Simril because he is black and conspired against Olsen and Hutchinson because of their support of Simril.
- ¶57 The Board ignored Olsen and Hutchinson at the Christmas Party.
- ¶67 In December 1999, the conspiracy caused Simril not to be hired and caused Defendants to offer the position to a less qualified white male named Ochs.
- ¶70 December 1999 - November 2000 - the Board had knowledge and allowed secret meetings to retaliate against Olsen and Hutchinson.
- ¶71 The Board and police officers instituted efforts to retaliate against Olsen and Hutchinson.
- ¶84 In January 2000, the Board secretly met with Hunt and conspired to include him in the conspiracy against Olsen and Hutchinson.
- ¶85 Hunt agreed to assist the Board in creating a false report.
- ¶88 Hunt's report contained baseless false allegations about Olsen and Hutchinson. Based on Hunt's report, the Board required Olsen to make numerous changes in a short time period and punished Hutchinson by requiring him to work all night shifts.
- ¶89 Based on Hunt's report, the Board took away Olsen's authority to act as police chief and required him to make thirty-seven changes in a short period of time.
- ¶90 July 27, 2000 - the Board accused Hutchinson of falsifying his work schedule. The Board instructed Hutchinson to disobey the orders of Olsen and that he would suffer if he failed to follow their directive.

- ¶96 Present at an Executive Session Meeting on July 19, 2000 where the Board made special arrangements and authorized overtime to pay police officers to assist applicant Brindley in completing the five phases of the hiring process.
- ¶101 The Board secretly met before interviews and decided to disregard the hiring process and hire applicant Brindley for the available position.
- ¶106 Tobin told Olsen and Hutchinson that the Board of Supervisors was trying to terminate their employment because of their support of Simril.
- ¶107 The Board of Supervisors are waiting to hire two new police officers until Simril's status on the top ten hiring list expires.
- ¶108 The Board continued to threaten to bring adverse action against Olsen if he continued to consider Simril for the two open positions.

KAUFFMAN (Township Supervisor)

Amended Complaint

- ¶43 At all relevant times, Kauffman was a supervisor on the Board of Supervisors.
- ¶53 In December 1999, Kauffman conspired not to hire Simril because he is black and conspired against Olsen and Hutchinson because of their support of Simril.
- ¶57 The Board ignored Olsen and Hutchinson at the Christmas Party.
- ¶60 On December 15, 1999, Kauffman asked Olsen, "Is it true that we have a black applicant?" Olsen replied, "Yes." Kauffman nodded his head and walked away. Kauffman did not ask whether white applicants had applied.
- ¶61 Member of the December 1999 hiring committee.
- ¶63 During the interviews, Kauffman was cordial

to white applicants, but silent and hostile towards Simril.

- ¶66 Kauffman and others decided to hire a less qualified white applicant named Ochs over Simril.
- ¶67 In December 1999, the conspiracy caused Simril not to be hired and caused Defendants to offer the position to a less qualified white male named Ochs.
- ¶70 December 1999 - November 2000 - the Board had knowledge and allowed secret meetings to retaliate against Olsen and Hutchinson.
- ¶71 The Board and police officers instituted efforts to retaliate against Olsen and Hutchinson.
- ¶84 In January 2000, the Board secretly met with Hunt and conspired to include him in the conspiracy against Olsen and Hutchinson.
- ¶85 Hunt agreed to assist the Board in creating a false report.
- ¶88 In June 2000, Kauffman and Zimmerman tried to persuade Olsen that the two top applicants were white men, even though Simril was the top applicant. Hunt's report contained baseless false allegations about Olsen and Hutchinson. Based on Hunt's report, the Board required Olsen to make numerous changes in a short time period and punished Hutchinson by requiring him to work all night shifts.
- ¶89 Based on Hunt's report, the Board took away Olsen's authority to act as police chief and required him to make thirty-seven changes in a short period of time.
- ¶90 July 27, 2000 - the Board accused Hutchinson of falsifying his work schedule. The Board instructed Hutchinson to disobey the orders of Olsen and that he would suffer if he failed to follow their directive.

- ¶96 Present at an Executive Session Meeting on July 19, 2000 where the Board made special arrangements and authorized overtime to pay police officers to assist applicant Brindley in completing the five phases of the hiring process.
- ¶99 August 2000 - Kauffman was on the hiring committee established to interview applicants for the available police position.
- ¶100 The hiring committee was cordial to white applicants, but was hostile towards Simril.
- ¶101 The Board secretly met before interviews and decided to disregard the hiring process and hire applicant Brindley for the available position.
- ¶102 During hiring deliberations, Kauffman said to Hutchinson, "I'm with you, Hutch, I like Simril too, but why should we hire a black person when we do not have many black people living in the township?"
- ¶106 Tobin told Olsen and Hutchinson that the Board of Supervisors was trying to terminate their employment because of their support of Simril.
- ¶107 The Board of Supervisors are waiting to hire two new police officers until Simril's status on the top ten hiring list expires.
- ¶108 The Board continued to threaten to bring adverse action against Olsen if he continued to consider Simril for the two open positions.

GARRETT (Chairman, Board of Supervisors until Dec. 31, 1999)
Amended Complaint

- ¶34 At all relevant times, Garrett was the chairman of the Board of Supervisors until December 31, 1999, when he became a newly elected District Justice in Warwick Township School District.
- ¶43 The Board of Supervisors consisted of Garrett

until December 31, 1999.

- ¶53 In December 1999, Garrett conspired not to hire Simril because he is black and conspired against Olsen and Hutchinson because of their support of Simril.
- ¶57 The Board ignored Olsen and Hutchinson at the Christmas Party.
- ¶67 In December 1999, the conspiracy caused Simril not to be hired and caused Defendants to offer the position to a less qualified white male named Ochs.
- ¶70 December 1999 - November 2000 - the Board had knowledge and allowed secret meetings to retaliate against Olsen and Hutchinson.
- ¶71 The Board and police officers instituted efforts to retaliate against Olsen and Hutchinson.
- ¶83 After Garrett became a District Justice, he still continued to materially participate with the co-conspirators by using his position to fabricate incidents to make Olsen appear as if he was not properly managing the police department. From December 1999 to November 2000, Garrett repeatedly refused to grant reasonable requests for continuances by police officers. On April 3, 2000, Garrett staged a fake emergency at his office. He complained to the Board that the police did not respond in a timely manner. Garrett also intimidated Hutchinson about his employment and made a physical gesture that Olsen was "finished."

BUCHER (Chairman, Board of Supervisors)
Amended Complaint

- ¶29 At all relevant times, Bucher was the vice chairman of the Board of Supervisors until December 1999 when he became chairman of the Board.
- ¶43 At all relevant times, Bucher was on the Board of Supervisors.

- ¶53 In December 1999, Bucher conspired not to hire Simril because he is black and conspired against Olsen and Hutchinson because of their support of Simril.
- ¶57 The Board ignored Olsen and Hutchinson at the Christmas Party.
- ¶60 Bucher made a facial expression of disapproval and walked away when Olsen said that there was a black applicant.
- ¶61 Member of the December 1999 hiring committee.
- ¶63 During the interviews, Bucher was cordial to white applicants, but silent and hostile towards Simril.
- ¶66 When computing the hiring scores, Bucher lowered Simril's score when he found out that Simril was the top applicant. After Simril was still leading, Bucher got angry and said that "We're hiring Ochs" and said to forget the scores and concentrate only on the interviews. Bucher, with the cooperation of others, decided to hire the less qualified white applicant Ochs.
- ¶67 In December 1999, the conspiracy caused Simril not to be hired and caused Defendants to offer the position to a less qualified white male named Ochs.
- ¶70 Bucher began numerous secret meetings with other co-conspirators. In furtherance of the conspiracy, Bucher involved himself in the day-to-day police business. He was also part of the conspiracy to retaliate against Olsen and Hutchinson.
- ¶71 The Board and police officers instituted efforts to retaliate against Olsen and Hutchinson.
- ¶80 December 1999 - November 2000 - Bucher developed very close relationships with subordinate police personnel in furtherance

of the conspiracy.

¶84 In January 2000, the Board secretly met with Hunt and conspired to include him in the conspiracy against Olsen and Hutchinson.

¶85 Hunt agreed to assist the Board in creating a false report.

¶87 In July 2000, Bucher said to Gensemer, "If Olsen fights us on any of this, and I mean any of this, there is going to be trouble, and I mean really big trouble."

¶88 Hunt's report contained baseless false allegations about Olsen and Hutchinson. Based on Hunt's report, the Board required Olsen to make numerous changes in a short time period and punished Hutchinson by requiring him to work all night shifts.

¶89 Based on Hunt's report, the Board took away Olsen's authority to act as police chief and required him to make thirty-seven changes in a short period of time. Bucher advised Olsen that if he failed to make the changes then he would be severely punished.

¶90 July 27, 2000 - the Board accused Hutchinson of falsifying his work schedule. The Board instructed Hutchinson to disobey the orders of Olsen and that he would suffer if he failed to follow their directive. Bucher said to Hutchinson that the Board was going to after Olsen.

¶93 In June 2000, Bucher instructed Olsen to include Brindley as an applicant even though he was not one of people on the top ten hiring list.

¶95 In June 2000, Bucher and Zimmerman attempted to persuade Olsen to dissuade Simril from applying for the police officer position.

¶96 Present at an Executive Session Meeting on July 19, 2000 where the Board made special arrangements and authorized overtime to pay

police officers to assist applicant Brindley in completing the five phases of the hiring process. Bucher repeatedly asked why Simril wants to apply for the position.

- ¶99 August 2000 - Bucher was on the hiring committee established to interview applicants for the available police position.
- ¶100 The hiring committee was cordial to white applicants, but was hostile towards Simril.
- ¶101 The Board secretly met before the interviews and decided to disregard the hiring process and hire applicant Brindley for the available position.
- ¶103 During hiring deliberations, Bucher instructed Olsen to disregard the numeral scoring system and hire applicant Brindley.
- ¶106 Tobin told Olsen and Hutchinson that the Board of Supervisors was trying to terminate their employment because of their support of Simril.
- ¶107 The Board of Supervisors are waiting to hire two new police officers until Simril's status on the top ten hiring list expires.
- ¶108 The Board continued to threaten to bring adverse action against Olsen if he continued to consider Simril for the two open positions.

ZIMMERMAN (Township Manager)

Amended Complaint

- ¶31 At relevant times, Zimmerman was the township manager for Warwick Township and reported directly to the Board of Supervisors.
- ¶53 In December 1999, Zimmerman conspired not to hire Simril because he is black and conspired against Olsen and Hutchinson because of their support of Simril.
- ¶58 On December 6, 1999, when Zimmerman heard about Simril's application, he told Olsen

that he opposed affirmative action.

- ¶61 In December 1999, Zimmerman was on the hiring committee.
- ¶63 During the interviews, Zimmerman was cordial to white applicants, but silent and hostile towards Simril.
- ¶65 During hiring deliberation, Zimmerman said that he thought that Simril "seemed pretty stupid." He also said that a person like Simril "belongs in a big city somewhere."
- ¶66 Zimmerman was aware and allowed Bucher's lowering of Simril's score. Zimmerman also advocated the hiring of Ochs.
- ¶67 In December 1999, the conspiracy caused Simril not to be hired and caused Defendants to offer the position to a less qualified white male named Ochs.
- ¶70 December 1999 - November 2000 - the Board had knowledge and allowed secret meetings to retaliate against Olsen and Hutchinson.
- ¶71 The Board, police officers and Zimmerman instituted efforts to retaliate against Olsen and Hutchinson.
- ¶74 Zimmerman told Hutchinson that the Board didn't have a problem with his or Olsen's job performances. Zimmerman also told Hutchinson that Olsen "needs to get his head out of his ass" and listen to the Board or else he will lose.
- ¶75 On July 18, 2000, Zimmerman tried to convince Olsen that Simril was not the top applicant.
- ¶88 In June 2000, Zimmerman and Kauffman tried to persuade Olsen that the two top applicants were white men, even though Simril was the top applicant. Hunt's report contained baseless false allegations about Olsen and Hutchinson. Based on Hunt's report, the Board required Olsen to make numerous changes in a

short time period and punished Hutchinson by requiring him to work all night shifts.

- ¶90 Zimmerman inquired about the status of two white applicants, but never asked about Simril.
- ¶94 In July 2000, Zimmerman refused to acknowledge that Simril was a viable applicant.
- ¶95 On several occasions, Zimmerman and Bucher tried to persuade Olsen to dissuade Simril from applying. He also questioned whether Simril wants to work in Warwick Township.
- ¶99 Zimmerman was on the August 2000 hiring committee.
- ¶100 The hiring committee was cordial to white applicants, but was hostile towards Simril.
- ¶101 Zimmerman secretly met with other conspirators before interviews and decided to disregard the hiring process and hire applicant Brindley for the available position.
- ¶108 Zimmerman met with Olsen and tried to persuade him to go for white applicant. He also told Olsen to rethink Simril being on the top of the list.

GENSEMER (Administrative Assistant)
Amended Complaint

- ¶40 At all relevant times, Warwick Township employed Gensemer as an administrative assistant.
- ¶53 In December 1999, Gensemer conspired to ensure that Simril would not be offered the open position because he is black. She also conspired to retaliate against Olsen and Hutchinson.
- ¶54 On December 3, 1999, Gensemer told Olsen that she did not think that Simril should be hired. She also said that Simril would not

fit into the squad room and wondered what everyone would talk about with a black man. Also, she said that the guys would have to watch their language and that he would not fit in at the Township picnics.

- ¶59 On December 13, 1999, Gensemer repeated several times and on several occasions that Ochs, a white applicant, is going to get the job. She said that "Ochs is getting the job, that's just the way things are."
- ¶70 December 1999 - November 2000 - Bucher began to hold secret meetings, which included Gensemer, to coordinate ways in which to retaliate against Olsen and Hutchinson.
- ¶71 The Board, police officers and Gensemer instituted efforts to retaliate against Olsen and Hutchinson.
- ¶72 In June 2000, Gensemer repeatedly told Hutchinson that Olsen was going to lose if he went up against the Board of Supervisors.
- ¶73 On July 6, 2000, Gensemer told Hutchinson that she no longer pays attention to Olsen because he is not in charge anymore.
- ¶83 In September 2000, Garrett made a remark about Olsen being "finished" and Gensemer laughed and became quiet when Hutchinson joined the group.
- ¶87 In July 2000, Bucher told Gensemer that if Olsen fights against Hunt's report then there will be really big trouble.
- ¶94 In July 2000, Gensemer told Tobin that he shouldn't debate over who to hire because he knows that Brindley will be hired.

HUNT (Warwick Township hired him to write a report entitled "A Needs Assessment for the Warwick Township Police Department.")

Amended Complaint

- ¶39 At all relevant times, Hunt was hired by Warwick Township to create a false report

about the job performances of Olsen and Hutchinson.

- ¶78 On May 9, 2000, in accordance with the conspiracy, Hunt and Brown fabricated an incident to make it appear as if Olsen was late for work. Specifically, Brown asked Olsen to pick-up photos for her on his way to work and when he did, he arrived at work late. Hunt and Brown reported Olsen's lateness to the Board.
- ¶84 In January 2000, in furtherance of the conspiracy, the Board secretly met with Hunt. The Board instructed Hunt to investigate and manipulate information against Olsen and Hutchinson in their employment capacities. Hunt and the Board hid their conspiracy by entitling the report "A Needs Assessment for the Warwick Township Police Department."
- ¶85 Hunt completely understood the conspiracy and knew that the Board refused to offer Simril a position because of his race. Hunt agreed to assist in the fake report to be used as a tool of retaliation against Olsen and Hutchinson.
- ¶86 In March 2000, the Board informed Olsen about Hunt's report. In July 2000, Hunt completed and submitted his report.
- ¶88 During Hunt's investigation, he met exclusively with subordinate police department personnel and intentionally avoided Olsen and Hutchinson. Hunt also failed to consider many various variables. The report was a personal attack on Olsen and Hutchinson. Hunt intentionally made baseless, misleading and false claims against Olsen's management of the police department. Also, Hunt recommended thirty-seven changes to the police department operations that have been rejected by other police departments. Hunt recommended that Hutchinson work all night shifts, which the Board agreed to implement.

¶89 Based on Hunt's report, the Board took away Olsen's authority to act as police chief and required him to make thirty-seven changes in a short period of time.

TOBIN (Detective Sergeant Police Officer)

Amended Complaint

¶35 At all relevant times, Tobin was a detective sergeant police officer for Warwick Township.

¶53 In December 1999, Tobin conspired not to hire Simril because he is black and conspired against Olsen and Hutchinson because of their support of Simril.

¶54 On December 3, 1999, Tobin was a member of the Phrase II hiring committee. Tobin told Olsen that Hutchinson should back off hiring Simril because he would not fit in with the guys in the squad room. Tobin also said that hiring Simril would cause trouble.

¶57 On December 11, 1999, at the Christmas party, Tobin warned Hutchinson's wife that Hutchinson's affiliation with Simril will cause trouble.

¶61 In December 1999, Tobin was on of the hiring committee.

¶63 Tobin cordially participated in the interviews of the white applicants, but was silent and hostile towards Simril.

¶67 In December 1999, the conspiracy caused Simril not to be hired and caused Defendants to offer the position to a less qualified white male named Ochs.

¶70 December 1999 - November 2000 - Bucher began to hold secret meetings, which included Tobin, to coordinate ways in which to retaliate against Olsen and Hutchinson.

¶71 The Board, police officers and Tobin instituted efforts to retaliate against Olsen and Hutchinson.

- ¶179 On August 4, 2000, Tobin and others manipulated a routine scheduling issue to create the false impression that Olsen and Hutchinson were not properly performing their jobs.
- ¶182 On September 6, 2000, Tobin and others manipulated a routine patrol scheduling issue to create a false impression that Olsen and Hutchinson were not properly performing their jobs.
- ¶194 In July 2000, during interview preparation, Tobin said, "I couldn't go for the nig, but I could go for DeAngelis just as well." Also, he said, "Other than the nig- I could go for either one of them (the white applicants)."
- ¶199 In August 2000, Tobin was on the hiring committee.
- ¶101 Tobin secretly met with other conspirators before interviews and decided to disregard the hiring process and hire applicant Brindley for the available position.
- ¶106 On September 12, 2000, Tobin met with Olsen and Hutchinson and informed them that the Board was trying to terminate their employment because they opposed the Board's efforts not to hire Simril because he is black. Tobin also said that Garrett was a leader of the attack and that Tobin had been assisting the Board but stopped because of the pressure.

RHINIER (Police Officer)

Amended Complaint

- ¶137 At all relevant times, Rhinier was a police officer with Warwick Township.
- ¶151 On December 2, 1999, Rhinier was on the Phrase III hiring committee. When viewing a security camera that showed Simril in the waiting area, Rhinier said, "Wait until you see the next guy." After Simril was interviewed, Rhinier said that, "He don't look too intelligent." After others challenged his assessment, Rhinier said,

"Come on - he will never make it by the supervisors." When Hutchinson questioned what he meant, Rhinier said, "Come on, look at him - he's black."

- ¶52 On December 2, 1999, Olsen and Hutchinson immediately removed Rhinier from the hiring committee because of his racist comments.
- ¶53 In December 1999, Rhinier conspired to ensure that Simril would not be offered the open position because he is black. He also conspired to retaliate against Olsen and Hutchinson.
- ¶59 On December 13, 1999, Hutchinson heard Rhinier and other officers in the squad room complaining about hiring a black man.
- ¶70 December 1999 - November 2000 - Bucher began to hold secret meetings, which included Rhinier, to coordinate ways in which to retaliate against Olsen and Hutchinson.
- ¶71 The Board, police officers and Rhinier instituted efforts to retaliate against Olsen and Hutchinson.
- ¶76 On August 1, 2000, Rhinier and Kilgore manipulated a routine police department scheduling issue to create the false impression that Olsen and Hutchinson were not properly performing their respective job duties. Rhinier and Kilgore did not notify Olsen and Hutchinson that Officer Fasnacht was out sick and not able to work. The usual procedure is to notify Olsen and Hutchinson, but this time they did not notify them and complained about being understaffed to the Board.
- ¶79 On August 4, 2000, Rhinier and others, in furtherance of the conspiracy, manipulated a routine patrol scheduling matter to make it appear as if Olsen and Hutchinson were not properly performing their jobs.
- ¶80 December 1999 - November 2000 - Bucher

developed very close relationships with subordinate personnel in furtherance of the conspiracy.

- ¶92 In June 2000, Rhinier and Kilgore told Olsen that Brindley was interested in an open police officer position. When Olsen told them that Brindley had previously been disqualified, Rhinier responded, "Yea, I know . . . I spoke to Bucher and he said that he would take care of that."

**GARRISON (Police Officer)
Amended Complaint**

- ¶38 At all relevant times, Garrison was a police officer for Warwick Township.
- ¶53 In December 1999, Garrison and others conspired to ensure that Simril would not be hired because he is black. He also conspired against Olsen and Hutchinson in retaliation for their support of Simril.
- ¶56 In December 1999, Garrison asked Olsen, "What's with Hutch and this black guy? Are we going to hire him?"
- ¶70 December 1999 - November 2000 - Bucher began to hold secret meetings, which included Garrison, to coordinate ways in which to retaliate against Olsen and Hutchinson.
- ¶71 The Board, police officers and Garrison instituted efforts to retaliate against Olsen and Hutchinson.
- ¶80 December 1999 - November 2000 - Bucher developed very close relationships with subordinate personnel in furtherance of the conspiracy. In August 2000, Garrison refused to comply with the established format for request for personal leave and instead demanded that Hutchinson work his shifts. Garrison made it clear that he could disregard Hutchinson's authority because of the conspiracy.

KILGORE (Police Officer)

Amended Complaint

- ¶41 At all relevant times, Kilgore was a police officer for Warwick Township.
- ¶53 In December 1999, Kilgore and others conspired to ensure that Simril would not be hired because he is black. He also conspired against Olsen and Hutchinson in retaliation for their support of Simril.
- ¶70 December 1999 - November 2000 - Bucher began to hold secret meetings, which included Kilgore, to coordinate ways in which to retaliate against Olsen and Hutchinson.
- ¶71 The Board, police officers and Kilgore instituted efforts to retaliate against Olsen and Hutchinson.
- ¶76 On August 1, 2000, Kilgore and Rhinier manipulated a routine police department scheduling issue to create the false impression that Olsen and Hutchinson were not properly performing their respective job duties. Kilgore and Rhinier did not notify Olsen and Hutchinson that Officer Fasnacht was out sick and not able to work. The usual procedure is to notify Olsen and Hutchinson, but this time they did not notify them and complained about being understaffed to the Board.
- ¶80 December 1999 - November 2000 - Bucher developed very close relationships with subordinate personnel in furtherance of the conspiracy.
- ¶92 In June 2000, Kilgore and Rhinier told Olsen that Brindley was interested in an open police officer position. When Olsen told them that Brindley had previously been disqualified, Rhinier responded, "Yea, I know . . . I spoke to Bucher and he said that he would take care of that."

BROWN (Police Officer)

Amended Complaint

- ¶42 At all relevant times, Brown was a police

officer for Warwick Township.

- ¶53 In December 1999, Brown and others conspired to ensure that Simril would not be hired because he is black. She also conspired against Olsen and Hutchinson in retaliation for their support of Simril.
- ¶55 In December 1999, Brown asked Olsen, "Is it true - are you going to hire a spook?"
- ¶59 On December 13, 1999, Hutchinson overheard Brown and other officers in the squad room complaining about hiring a black man.
- ¶70 December 1999 - November 2000 - Bucher began to hold secret meetings, which included Brown, to coordinate ways in which to retaliate against Olsen and Hutchinson.
- ¶71 The Board, police officers and Brown instituted efforts to retaliate against Olsen and Hutchinson.
- ¶77 On August 2, 2000, in furtherance of the conspiracy, Brown asked Hutchinson to drop her off at a car dealership while he was on-duty.
- ¶78 On May 9, 2000, in accordance with the conspiracy, Brown and Hunt fabricated an incident to make it appear as if Olsen was late for work. Specifically, Brown asked Olsen to pick-up photos for her on his way to work and when he did, he arrived at work late. Hunt and Brown reported Olsen's lateness to the Board.
- ¶80 December 1999 - November 2000 - Bucher developed very close relationships with subordinate personnel in furtherance of the conspiracy.

BURDGE (Police Officer)

Amended Complaint

- ¶53 In December 1999, Burdge and others conspired to ensure that Simril would not be hired because he is black. He also conspired

against Olsen and Hutchinson in retaliation for their support of Simril.

- ¶70 December 1999 - November 2000 - Bucher began to hold secret meetings, which included Burdge, to coordinate ways in which to retaliate against Olsen and Hutchinson.
- ¶71 The Board, police officers and Burdge instituted efforts to retaliate against Olsen and Hutchinson.
- ¶79 On August 4, 2000, Burdge and others, in furtherance of the conspiracy, manipulated a routine patrol scheduling matter to make it appear as if Olsen and Hutchinson were not properly performing their jobs.
- ¶80 December 1999 - November 2000 - Bucher developed very close relationships with subordinate personnel in furtherance of the conspiracy.
- ¶81 On September 6, 2000, in furtherance of the conspiracy, Burdge faked a theft of seventy-five dollars in the police department and accused Hutchinson of the theft and reported it to the Board.
- ¶82 On September 6, 2000, in furtherance of the conspiracy, Burdge and Tobin manipulated a routine police patrol scheduling matter to create the false impression that Olsen and Hutchinson were not properly performing their jobs.
- ¶83 In September 2000, Garrett made a gesture that Olsen was "finished" and Burdge laughed loudly and silenced when Hutchinson joined the group.
- ¶99 On August 2, 2000, Burdge was on the hiring committee. At all relevant times, Burdge was employed as a police officer for Warwick Township.
- ¶100 On August 2, 2000, Burdge was cordial to white applicants, but was hostile towards Simril.

¶101 After Simril's interview, Burdge said, "I can't believe a guy like that would want to work around here - he just belongs in a big city somewhere - hell, why doesn't he apply for York or Lancaster City?" Burdge secretly met with others and agreed to disregard the hiring policy and hire Brindley.

BALLENGER- Detective Sergeant Police Officer with Ephrata Amended Complaint

¶36 At all relevant times, Ballenger was a detective sergeant police officer for the Borough of Ephrata.

¶53 In December 1999, Ballenger and others conspired to ensure that Simril would not be hired because he is black. He also conspired against Olsen and Hutchinson in retaliation for their support of Simril.

¶61 In December 1999, Ballenger was on the hiring committee for the final phase of the hiring process. Ballenger is a senior ranking Sergeant police officer of the Borough of Ephrata and a close friend of Tobin. Tobin handpicked Ballenger to be on the committee for the final interview.

¶63 Ballenger and others cordially participated in the interviews of white applicants, but were hostile towards Simril.

¶65 During deliberation, Ballenger said that Simril seemed pretty stupid to him. He also agreed that Simril belonged in a big city and sat back in his chair and did not participate in the rest of Simril's interview. Also, Ballenger scored Simril significantly lower than the white applicants.

¶66 With the cooperation of Ballenger, the committee hired a less qualified white applicant.

¶67 On December 21, 1999, Ballenger's involvement in the conspiracy caused Simril to be rejected for the position and the position to be offered to the less qualified Ochs.

BOROUGH OF EPHRATA

Amended Complaint

¶14 The Borough of Ephrata is a municipal corporation organized and existing under the laws of Pennsylvania.

¶61 Since 1995, Warwick Township has hired six police officers and the custom of police department hiring procedure is to include the Chief of Police of Ephrata on the Phase V hiring committee. The Chief of Police of the Borough of Ephrata was a member of the final Phase V hiring interview four of the six times. Ballenger is a senior ranking sergeant police officer for the Borough of Ephrata.

Based on the aforementioned standard, the Court has accepted as true all of the allegations in the Plaintiffs' Amended Complaint and all reasonable inferences that can be drawn therefrom, and has viewed them in the light most favorable to the plaintiff. After analyzing the Amended Complaint in conjunction with this standard, the Court is not convinced that Plaintiffs could not be entitled to relief under any set of facts that could be established in support of their claims. Realistically viewing the whole factual situation articulated in the Amended Complaint, the Court is unable to dismiss Plaintiffs' Amended Complaint or preclude Plaintiffs from offering evidence to support their claims at this stage of the litigation. As for the specific pleading requirement for a civil rights action based upon a claim of conspiracy, the Plaintiffs' allegations in their Amended Complaint are sufficiently specific and particular to put the Defendants on notice about the period of the conspiracy, the

object of the conspiracy and certain actions of the conspirators taken to achieve that purpose. Based upon the foregoing, the Court cannot dismiss Plaintiffs' Amended Complaint

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SIMRIL, et al.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 00-5668

THE TOWNSHIP OF WARWICK, et al., :
: :
Defendants. :
:

ORDER

AND NOW, this 13th day of August, 2001, upon consideration of Defendants' Motions to Dismiss, and the Replies and Responses thereto, it is hereby ORDERED that:

- 1 Defendants' Motion to Dismiss (Dkt. Nos. 31, 35, 38, 40, 41, 42, 44, 45, 46, 47, 48 and 49) are DENIED.
2. All other outstanding Motions (Dkt. Nos. 50, 51, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69 and 71) are DENIED as moot.

BY THE COURT:

Robert F. Kelly, J.