

GRIEVANCE

BY LIEUTENANT DAVID SWENSON

DATE: 01/26/16

TO: City Administrator David Schelkoph and Valley City Commissioners

FROM: Lieutenant David Swenson

SUBJECT: Grievance Against Valley City Mayor Robert Werkhoven Concerning and Abusive and Hostile Work Environment

1. It is with great regret that I'm submitting this grievance against Mayor Robert Werkhoven, for a Hostile Work Environment, under the protections afforded to me by the North Dakota Century Code (N.D.C.C.) Chapter 34-11-1 (The Public Employees Relations Act) and the Valley City Employee Policy and Procedure Manual, 7.7 Harassment and Discrimination. In light of the issues that have transpired, I believe this grievance is justified and should be addressed in a timely manner. The Valley City Employee Policy and Procedure Manual, 7.7 Harassment and Discrimination states, "This policy ensures that all employees will enjoy a work place free from unreasonable interference, intimidation, hostility, or offensive behavior on the part of the managers, co-workers, or visitors."
2. On October 14, 2015, I participated in an interview process for the lieutenant position, which was designed by the chief of police. This process was designed and set up so experienced members of law enforcement would select the person qualified as lieutenant. These members of law enforcement did not know the candidates applying for the lieutenant position at the Valley City Police Department. This was designed and implemented so members within city hall, including the Mayor, Robert Werkhoven, would know was fair and without bias and all candidates would be given an equal opportunity for promotion. The Chief of Police told us he invited the entire city commission as well as the City administrator to observe the testing process. During the testing process, there were only two people from the city who showed up, the city administrator and one commissioner. After the testing process was completed, the committee selected me as the next lieutenant for the Valley City Police Department me.
3. On November 9, 2015, I was to be sworn in at the City Commission meeting, which was being held at 1700 hours. Chief Fred Thompson told me, there might be some issues with my swearing in, since the Mayor refuses to swear me in as the next lieutenant. Attached, as Exhibit 10 are emails dated November 9, 2015 regarding who can swear in officers.

4. I spoke to the City Auditor, Avis Richter, in the afternoon of November 9, 2015. She told me the Mayor said he was going out of town for a meetings and he didn't think he would be back in time for the commission meeting. Richter showed me the e-mail that the Mayor sent to her. Richter also told me that she knew the Mayor didn't want to swear me in as the next lieutenant. I said I did not believe it either since I just saw him at noon, pulling out of the parking lot of Handy Hardware. I explained that I saw the Mayor driving his green Dodge pickup, wearing grungy clothes and a hat and he was not dressed in clothes someone would normally wear to a meeting.
5. On or about November 17th, 2015, a posting on a social media website, by Tony Drake, who is Robert Drake's son, states the following:

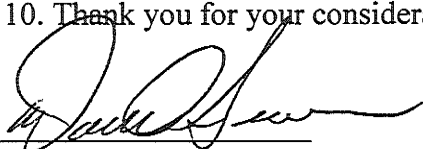
"I may get in trouble for speaking out but a coward is Mayor of this city. I personally was handed a agan....da (sic) by Mayor Workhoven for last Monday nights promotion of officer Swenson to lieutenant. His exact words were "you guys need to be there in protest of this promotion because I cannot be there." He said "We cannot allow this to happen." What kind of gutless wonder asks citizens to make change when he has the power and influence to import change as the mayor but doesn't have the courage to do so."

I know the Mayor doesn't like me but he is out in the public trying to encourage people to protest against my promotion, just because he doesn't like me. Attached, as Exhibit 11 is a true and correct copy of the November 17, 2015 post by Tony Drake.

6. I have had numerous people tell me the Mayor does not like me and wants to see me fired. This issue stems all the way back to 2011 when the City of Valley City was trying to fire Dean Ross and myself over false accusations. After the City of Valley City had us investigated, it was determined there were no criminal violations committed on our part. The City of Valley City ended up settling the issues, by allowing Dean Ross to retire in good standing and they came to a settlement, which was agreed by both parties. After this agreement was signed, the Mayor told the City Attorney, "Too bad we can't get rid of that S.O.B.", referencing me. The Mayor told the City Attorney they needed to continue to try and get rid of Swenson. Since 2011, the Mayor on multiple occasions has been telling the City Attorney we need to get rid of Swenson.
7. When the City Administrator started with the City of Valley City, the Mayor told him he wanted to get rid of me as well.
8. I have been dealing with the false, senseless and accusations of the Mayor and his lack of professional courtesy towards me since 2011. I'm personally tired of it. I'm finding it extremely difficult to work in this environment, because his actions have created a hostile and abusive work environment. I'm asking the City Council to censure and reprimand Mayor

Werkhoven for his conduct and to inform him that the council and the City expect him to civilly and professionally carry out the duties of Mayor. I am requesting that my complaint of a Hostile Work Environment be investigated and dealt with in a timely manner.

9. N.D.C.C. 34-11.1-04.2 (Employee representation at grievance proceeding) provides that "An employee who is a party to a work related grievance proceeding may be accompanied, advised, and represented throughout the proceeding by another employee or by a representative chosen by the proceeding by another employee or by a representative chosen by the employee involved in the proceeding." I am represented by attorney Joseph F. Larson II and I request that he is present during all proceedings.
10. Thank you for your consideration and attention to this matter.



Lieutenant David Swenson

DAVID SWENSON

855 12th Street NW #204, Valley City, ND 58072

Cell 701-840-9999

swenson1610@hotmail.com

OBJECTIVE:

To continue serving the community with the highest level of professionalism in Law Enforcement

SUMMARY OF QUALIFICATIONS:

- Licensed law enforcement officer
- ND Peace Officers Standards & Training License
- Dedicated professional law enforcement officer with 17 years full time and three years part time experience
- Excellent communication, interpersonal, motivational and leadership skills
- Possesses and consistently demonstrates firm, but fair attitude
- Reputation for honesty, integrity, and loyalty
- Certified defensive driving instructor
- Community Service Coordinator

EXPERIENCE:

1998 - present:

Police Officer/Sergeant/Lieutenant, VCPD
Valley City, ND

Responsible for supervising, employee evaluations, scheduling, patrol, background investigations, criminal & drug investigation, community education programs for youth & adults, ordering & maintenance of equipment for the department, grant writing, and attended several leadership training courses

In 2008, selected by peers as top leader of the class

2010 - present:

Barnes County Community Service Coordinator,
Valley City, ND

Coordinates all community service as court ordered by

District, Municipal & Juvenile Court; interacts with citizens throughout the county; makes deposits; creates and processes required forms; drafting and management of program budget

TRAINING:

Over 2,297 hours of Certified Law Enforcement Training, including:

- Mastering Leadership Skills I & II
- ICS 300 & 400
- Background Investigative Training
- Criminal Investigation
- Homicide Investigation
- Drug Interdiction & Investigation
- Investigative Statement Analysis
- Under the Shield Warrior Survival
- Managing the Use of Force Incident
- Method of Instruction Certified
- Crisis Negotiation
- Supervising Patrol Critical Incidents
- CPR Certified, AED Certified, NIMS Certified
- Fair Labor Standards Act/Officers Rights
- Human Service Mandated Reporters Interactive Training
- International Association for Property & Evidence Inc. Certified

EDUCATION:

Graduate, Lake Region State College, Devils Lake, North Dakota, 1997.
Peace Officers Standards and Training Certification

Graduate, Moorhead High School, Moorhead, Minnesota, 1985.

AFFILIATIONS:

- Fraternal Order of Police
- Valley City Booster Board Member
- United Way of Barnes County
- Optimist Club of Valley City

Exhibit List

1. Email from Fred Thompson dated October 16, 2015 regarding his notice of resignation.
2. Email from David Schelkoph dated October 19, 2015 regarding his job application outside of the city of Valley City.
3. Email from David Schelkoph dated October 22, 2015 regarding Police Chief search.
4. Robert Drake request to be placed on agenda dated October 28, 2015.
5. Facebook post by Tony Drake dated November 17, 2015.
6. Email from David Schelkoph dated December 21, 2015 regarding Tony Drake's office meeting about Mayor Robert Werkhoven.
7. Email from Robert Werkhoven dated November 23, 2015 regarding facebook accusations against Mayor Werkhoven.
8. Email from David Schelkoph dated November 23, 2015 regarding meeting for Police Chief applicants.
9. Email from City Attorney Russell J. Myhre to Mayor Werkhoven regarding Lease agreement with Schlagel dated October 7, 2015.
10. Emails dated November 9, 2015 regarding swearing in of officers.
11. Social media page of Tony Drake.

Russell Myhre

From: David Schelkoph <dschelkoph@valleycity.us>
Sent: Monday, November 09, 2015 10:02 AM
To: Fred Thompson
Cc: russell.myhre@myhrelaw.com
Subject: RE: Question

Fred,

We will see what happens tonight. It looks like Either the Mayor or Vice President (Matt) will be swearing in Dave. The Mayor has said that he would not be at the meeting tonight.

We will see what happens. I will swear in Dave myself if need be. I would be proud to do it. I offer this only if all else fails and you want me to. Dave's selection for the Lt. position was fair. We protected the process from internal/political bias to make sure the candidates were insulated from innuendo and unfounded public criticisms.

We will see what tonight brings. Either way Dave will be sworn in tonight.

Dave
David Schelkoph
City Administrator
Valley City, ND
Office Phone # 701-845-1700 Ext. 1

From: Fred Thompson
Sent: Monday, November 09, 2015 9:47 AM
To: David Schelkoph
Cc: Russel Myhre (russell.myhre@myhrelaw.com)
Subject: Question

Sir,

It is my understanding that the Mayor is refusing to swear in Sgt. Swenson to the position of Lieutenant this evening. Please see the appropriate North Dakota Century Code below.

40-20-05. Chief of police and police officers - Powers and duties - Hot pursuit.

1. The chief of police shall perform such duties as shall be prescribed by the governing body for the preservation of the peace. The chief of police shall have the authority to administer oaths to police officers under the chief's supervision. Within the city limits, and for a distance of one and one-half miles [2.41 kilometers] in all directions outside the city limits, the police officers and watchmen of the city shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of this state.
2. A police officer in "hot pursuit" may continue beyond the one and one-half mile [2.41 kilometer] limit to make an arrest, in obedience to a warrant or without a warrant under the conditions of section 29-06-15, whenever obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay

permitting escape. As used in this Page No. 1 subsection, "hot pursuit" means the immediate pursuit of a person who is endeavoring to avoid arrest.

3. Police officers shall serve and execute any warrant, writ, process, order, or notice issued to them by a municipal judge within the city in any civil or criminal action or proceeding for or on account of a violation of any city ordinance or in any action or proceeding in which the city is a party or is interested beneficially. The police, within the limits prescribed in this section, may serve and execute all writs and process issued by justices in civil actions. In addition to the duties set out in this section, the police shall perform such other duties as may be prescribed by ordinance or statute.

Please advise.

Thank you,

Chief Fred J. Thompson

Valley City Police Department
216 2nd AVE NE
Valley City, North Dakota 58072
Office: (701) 845-3110
Cell: (701) 840-5741
Fax: (701) 845-3100
ftompson@valleycity.us
FBINA Session #225
IACP #1631406
ND POST License #5103

Russell Myhre

From: David Schelkoph <dschelkoph@valleycity.us>
Sent: Monday, November 09, 2015 10:42 AM
To: Russell Myhre; Fred Thompson
Subject: RE: Question

Thanks Russ,

I figured that I could not swear in Dave. Just wanted you and Fred to know that I believe Dave was the best candidate for the job and that I would stand by this decision.

Dave
David Schelkoph
City Administrator
Valley City, ND
Office Phone # 701-845-1700 Ext. 1

From: Russell Myhre [mailto:russell.myhre@myhrelaw.com]
Sent: Monday, November 09, 2015 10:33 AM
To: David Schelkoph; Fred Thompson
Subject: RE: Question

Dave and Fred:

I looked over the statutes and ordinances regarding the administering of oaths. Generally, oaths of office for the mayor and commissioners are administered pursuant to the authority, both express and implied, of Section 40-09-06. After that, only certain other city officers may administer oaths.

1. While it is not expressly stated under statute or ordinance, municipal judges and their clerks of court have an implied power to administer oaths at trial.
2. A police chief has the power to administer oaths under Section 40-20-05.
3. Section 40-16-07 authorizes the City Auditor to administer oaths to witnesses, although it is not clear if that authority extends to administering oaths to appointees.

40-16-07. Auditor may take testimony.

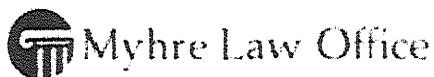
A city auditor may administer oaths and affirmations to witness and take testimony in connection with any of the duties imposed upon the city auditor by the laws of this state.

I would note that there is no specific legal authority for a City Administrator to administer oaths.

I trust this information is sufficient for your purposes.

Russell J. Myhre

Attorney at Law



Let me pre-empt the below message by saying Valley City has many amazing people that are hard working with good hearts. That said; For years my Dad has done his best to help the citizens of Valley City by pointing out corruption in city hall, only to have people call him a trouble maker. Well I'm proud of my Dad for doing what no one else seems to have the courage to do. I may get in trouble for speaking out but a coward is Mayor of this city. I personally was handed a agan...da by Mayor Workhoven for last Monday nights promotion of officer Swenson to lieutenant. His exact words were " you guys need to be there in protest of this promotion because I cannot be there". He said "We cannot allow this to happen". What kind of gutless wonder asks citizens to make change when he has the power and influence to impart change as the mayor but doesn't have the courage to do so. He also came to visit my Dad about a dozen times to discuss the Sheriff's department taking over the law enforcement responsibilities of valley city, all the while trying to urge my Dad to follow his lead in doing so. Yet when my Dad did, the Mayor threw him under the bus after he took some heat from other council members, he flip flopped calling exactly what they agreed on as being to extreme. If I didn't see the mayor come visit the shop dozens of times personally I wouldn't speak of it, but I've seen it and I've been involved in several of the conversations. My Dad has ONLY EVER fought for the people yet he's marred as a trouble maker. Several years ago my Dad told the city that they didn't have to buy the railroad land where the rosebud center sits today, because the agreement between congress and the railroads was that once a line was abandoned by the RR it then reverts back to the entity neighboring the property. But instead the city administration mocked him, as did many in the city. Well guess what? My Dad was right and the city paid \$450,000 to the RR for property the city already owned, plus attorneys fees, and survey fees. But do you think anyone apologized to him? No not one. I am very proud of my Dad for having the guts to stand up for what he believes in, for putting the people of valley city before his own business, and never cowering to the pressures of the few wealthy people that control our city administrator, city council, and other city employees. If I turn out to be half the man my Dad is and have half the courage he does I'll still be twice the man many in this city are who just pat him on the back because they agree with him, but don't have courage to stand beside him. I'll be by his side at tomorrow night's city council meeting and I encourage all of you to do so too! You've got to stand for something or you'll fall for anything. I hope you all have a great day!

Exhibit 11

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA)

:SS

COUNTY OF STUTSMAN)

The undersigned, being first duly sworn, says that a copy of the attached:

Grievance of Lieutenant David Swenson,
dated January 26, 2015 and Exhibits 10 and 11

was served upon:

Valley City Auditor
Avis Richter
P.O. Box 390
Valley City, ND 58072-0390

Robert J. Werkhoven
Mayor of Valley City
630 10th Ave. SW
Valley City, ND 58072

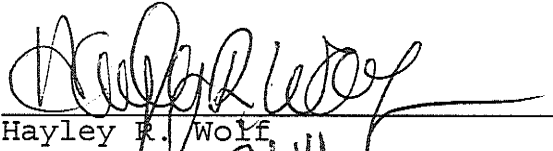
Matt Pederson
Valley City Commissioner
540 4th Ave. SW
Valley City, ND 58072

Duane Magnuson
Valley City Commissioner
650 6th Ave. SW
Valley City, ND 58072

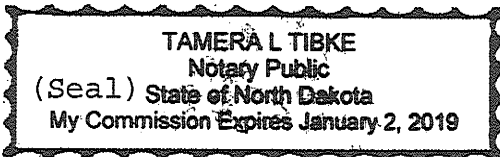
Madeline Luke
Valley City Commissioner
747 6th St. NE
Valley City, ND 58072


Mary Lee Nielson
Valley City Commissioner
1228 Chautauqua Blvd.
Valley City, ND 58072

by enclosing the same in an envelope addressed to the above at the above address with postage fully prepaid and by depositing said envelope in a United States postal mailbox at Jamestown, North Dakota, on the 26 day January, 2016.


Hayley R. Wolf

Subscribed and sworn to before me this 26th day January, 2016.




Tamera L. Tibke, Notary Public
Stutsman County, North Dakota