

Justin Daniels
723 Suhrke Rd
Plymouth, WI 53073

vs.

PFC Complaint No.: _____

Christopher Domagalski
Chief of Police, Sheboygan Police Department
1315 N 23rd St
Sheboygan, WI 53081

MOTION TO DISMISS and BRIEF IN SUPPORT OF MOTION TO DISMISS FOR LACK OF STANDING

Introduction

Chief Christopher Domagalski (“RESPONDENT”), submits the following Brief in support of his Motion to Dismiss the entire Complaint by Justin Daniels (“COMPLAINANT”). Complainant is a resident of the City of Plymouth, does not and has never worked for the City of Sheboygan, did not live in the City of Sheboygan during the time frame of the complaint, and does not have any personal or direct involvement with any of the alleged charges. Complainant is the significant other of the only named victim in this matter, Abigail Hernandez. Ms. Hernandez filed a significant complaint with the Department of Workforce Development based on the allegations in this complaint, and on August 9, 2022 entered into a settlement agreement with the City which included (among other things) a payment of \$110,000, withdrawal of her complaint, release of claims, and a confidentiality and non-disparagement clause.

Argument

Section 62.13(5)(b) of the Wisconsin Statutes provides that charges may be filed by the Chief, a member of the PFC, the PFC as a whole, or any *aggrieved person*. A charge filed by anyone else may be dismissed. It is generally understood that an aggrieved person is one with a legal interest that is alleged to have suffered some harm through the misconduct of an employee of the Police Department. The purpose for this requirement is to ensure that the PFC is being presented with the best evidence by the

people who are most reliable. Wis. Stat. s. 62.13(5)(g) authorizes the PFC to establish further rules for the administration of disciplinary actions but the PFC has not established a rule expanding “aggrieved person” beyond this general understanding.

While the City of Sheboygan does not directly address what constitutes an “aggrieved person” many PFC’s have defined the classes of aggrieved persons, and numerous court cases have further helped define the term. In *Castaneda v. Welch*, the Wisconsin Supreme Court analyzed whether the Milwaukee PFC policies for citizen complaints were legal. *Castaneda v. Welch*, 2007 WI 103, 735 N.W.2d 131 (2007). The court determined that Milwaukee’s rules for what constituted an “aggrieved person” were too strict because they only allowed complaints from “someone who is directly affected by the alleged misconduct, or the parent or legal guardian of a minor who is directly affected by the alleged misconduct.” *Id.* At 601. The Court found this rule too limiting because there may be situations in which a person who is not a minor may be unable to file a written complaint, such as when the victim is deceased, and also, the rule does not account for eyewitnesses of wrongdoing who may not have been *directly* affected by the alleged misconduct. *Id.* The Court ended its analysis by stating, “A well-crafted rule should be able to take account of these special situations.” *Id.*

Many Commissions have crafted rules which satisfy the requirement in *Castaneda* while still limiting who can file a charge. For example, the City of Oshkosh’s procedures state:

“Third-party complaints will not be dismissed if there is a reasonable explanation why a person with standing has not filed Charges, e.g., the person who was directly affected is a minor child, is elderly, disabled or deceased, cannot communicate easily in English, is not a citizen, or is otherwise unable to represent him/herself and the person or organization filing the complaint demonstrates the ability to adequately present competent evidence necessary for the PFC to make the determinations required under these Procedures or is a judge or other governmental official referring a matter over which he/she exercised authority or judgment under his/her discretion.”

In this matter, several individuals could be considered “aggrieved persons” able to file charges with the PFC. In fact, Abigail Hernandez already filed a complaint with the Department of Workforce Development and EEOC using the same facts that are presented here. Her act of filing illustrates that she is capable of filing a complaint with the PFC but has not exercised that ability. There are no “special situations” in this matter that would render Mr. Daniels an “aggrieved party.” All persons involved are living, competent, and capable. Mr. Daniels did not witness any of the underlying conduct. If the Complainant is acting as the agent of, or on behalf of Ms. Hernandez, then (barring exacerbating circumstances) she would need to file the charges. If the Complainant is acting on his own, then he has no personal interest in the charges that are being filed and is not an aggrieved person. Either way, the Complainant has no standing to bring these charges against the Chief, and therefore this body must dismiss the Complaint in its entirety. He is no more an aggrieved party in this matter than he would be to any other police department matter in the state.

The reason that the Statute requires the charges to be filed by an aggrieved person is the same reason that a court of law requires an individual to have standing: without some parameters governing who may file claims, anyone could file complaints against anyone for any reason. If this body determines that the Complainant qualifies as an “aggrieved person” as the statute requires, the body would open the door to any individual from anywhere in the world to file charges with the police and fire commission based on something as remote as reading an article about the City in a newspaper. Individuals lacking any first-hand knowledge or experience would be permitted to file a charge with the police and fire commission even though they’d be exclusively relying on hearsay to justify the charges. This cannot be the standard by which this Board, or any board, allows complaints to be filed.

Conclusion

The COMPLAINANT is not a citizen of the City of Sheboygan, is not an employee of the City of Sheboygan, has no first-hand knowledge or personal connection to any of the alleged charges brought

forth, has no reason to be acting for someone who is otherwise unable to act, and in no way is an “aggrieved person” under the law. Because the COMPLAINANT is not an “aggrieved person”, we respectfully request that this Board dismiss all charges with prejudice.

Dated this 26th day of May, 2023

CITY OF SHEBOYGAN

By: electronically signed by Adam James Westbrook

Adam James Westbrook

Director of Human Resources and Labor Relations Attorney

State Bar No. 1098561

Human Resources Department, City of Sheboygan

828 Center Ave

Sheboygan WI 53081

(920) 459-3314

Adam.westbrook@sheboyganwi.gov