

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

HECTOR HERNANDEZ and
CHARLES TERMINI, individually, and on behalf
of all others similarly-situated,

Plaintiffs,

v.

JAMIE RHEE, in her official capacity as
Commissioner of the Department of Aviation;
WILLIAM HELM, in his individual capacity;
JOSEPH ALESIA, in his individual capacity;
KEVIN MARTIN, in his individual capacity; and,
the CITY OF CHICAGO, as a municipal
corporation and as indemnitor,

Defendants.

Case No. 18-cv-7647

COMPLAINT AT LAW

HECTOR HERNANDEZ and CHARLES TERMINI, Plaintiffs, individually, and on behalf of all others similarly-situated, by and through their undersigned attorney, Cass T. Casper, TALON LAW, LLC, state as follows for their Complaint against Defendant CITY OF CHICAGO, JAMIE RHEE in her official capacity as Commissioner of the Department of Aviation, WILLIAM HELM, JOSEPH ALESIA, and KEVIN MARTIN.

1. Plaintiff HECTOR HERNANDEZ individually, and on behalf of all others similarly-situated, brings this action to redress acts of political discrimination and retaliation in violation of the First Amendment pursuant to 42 U.S.C. § 1983 in violation

of Plaintiffs' rights to free political association, and as Whistleblowers under Illinois' Whistleblower Act for bullying and immense mistreatment they have suffered following their reporting of the political discrimination herein to the CITY IG.

2. Plaintiffs HERNANDEZ and TERMINI also bring this complaint for violations of their federal constitutional rights and Illinois' Whistleblower Act to be free from retaliation for acts of exposing and reporting government corruption with the CITY's IG relating to the political discrimination. Both Plaintiffs have suffered extreme acts of bullying and retaliation for their protected conduct stated herein – including, on the date this Complaint is filed, a 30-day suspension being suddenly issued to TERMINI.

3. Plaintiff HERNANDEZ is a Motor Truck Driver ("MTD") with Chicago's Department of Aviation who has been deprived of substantial overtime and preferred assignments and equipment because he has refused to engage in forced political work for certain Democratic precincts on and off City time at the behest of Defendants HELM, ALESIA, and MARTIN.

4. This overtime disparity is primarily explained by acts of political discrimination orchestrated by Defendants, with overtime at O'Hare Airport among the MTDs being distributed, at least in significant, substantial part, as remuneration for political favors conducted for certain Democratic precincts on and off duty by MTDs are the expectation of Defendants.

5. As noted in this Complaint, Plaintiffs and the MTDs at O'Hare

Airport serve a vital public safety function for one of the world's busiest airports, and the existence of overtime is a necessary incentive to safeguard the public by allowing the CITY to retain the best-of-the-best Drivers. The distribution of that overtime for political reasons, however, is the basis of this Complaint, as well as extreme retaliation being suffered by Plaintiffs for their cooperation with the IG's investigation.

6. For example, Plaintiff TERMINI has been cooperative with the IG to Defendants' knowledge, and on the date of the filing of this Complaint he was suddenly issued a 30-day suspension in unheard of fashion and for warrantless, trumped up allegations at the hands of some or all the individual Defendants.

7. Plaintiff HERNANDEZ brings this suit individually and on behalf of all other similarly-situated MTDs who have been victims of Defendants' unlawful political discrimination in the distribution of overtime

8. Plaintiffs HERNANDEZ and TERMINI bring this suit for extreme acts of retaliation they have and are suffering – even on the date of the filing of this Complaint – for their exposing political discrimination and cooperating with the IG's investigation into political favoritism into same at the Department of Aviation.

JURISDICTION AND VENUE

9. Jurisdiction of this Court arises under 42 U.S.C. § 1983, 42 U.S.C. § 1988(a) and (b), 28 U.S.C. § 1331, 28 U.S.C. § 1343, and the First and Fourteenth Amendments to the United States Constitution.

10. This Court has jurisdiction over the state law Illinois Whistleblower Act claim pursuant to 28 U.S.C. § 1367 under the principles of supplemental jurisdiction, and such claim so relates to the federal claims as to form a part of the same case and controversy.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants have their principal places of operation in this District, Plaintiffs and, on belief, all Defendants, reside and are domiciled in this District, and all the acts/omissions giving rise to Plaintiffs' claims have occurred in this District.

EXHAUSTION

12. On June 16, 2014, the City of Chicago was dismissed as a party from the *Shakman* Accord after a finding of Substantial Compliance by the *Shakman* Monitor. See *Shakman v. City of Chicago, et al.*, 69-cv-02145, Dkt. 3861 (J. Schenkier, June 6, 2014). Plaintiffs therefore have no applicable remedy under any *Shakman* Order.

13. HERNANDEZ filed a class-action grievance under the collective bargaining agreement encompassing matters raised in Complaint covering MTDs and processed it up to arbitration, but the matter was not sent for arbitration by the union.

14. HERNANDEZ, and all similarly-situated MTDs, have exhausted their contractual remedies.

PARTIES

15. Plaintiff HECTOR HERNANDEZ ("HERNANDEZ") is and was at all times

relevant to this Complaint an adult male resident of Cook County and the City of Chicago, Illinois. At all times relevant, Plaintiff has been employed by the City of Chicago within the Department of Aviation as a MTD. Plaintiff was harmed by Defendants in this District.

16. Plaintiff CHARLES TERMINI ("TERMINI") is and was at all times relevant to this Complaint an adult male resident of Cook County and the City of Chicago, Illinois. At all times relevant, Plaintiff has been employed by the City of Chicago within the Department of Aviation as a MTD. Plaintiff was harmed by Defendants in this District.

17. Defendant CITY OF CHICAGO is a municipal corporation under the laws of the State of Illinois. It has obligations as an indemnitor of conduct of its employees and officers under at least 745 ILCS 10/2-301, *et seq.* and 745 ILCS 10/9-101, *et seq.* Defendant harmed Plaintiffs in Cook County, Chicago, Illinois.

18. Defendant JAMIE RHEE is the Commissioner of the Department of Aviation, Chicago, Illinois. She is sued in her official capacity. Defendant harmed Plaintiffs in Cook County, Chicago, Illinois.

19. Defendant WILLIAM HELM is an employee of the City of Chicago holding the position of Deputy Commissioner at O'Hare Airport within the Department of Aviation. At all times relevant he has been one of both Plaintiffs' immediate supervisors and responsible for determining the terms, conditions, and benefits of

employment of Plaintiffs. He is sued in his individual capacity. Defendant HELM harmed Plaintiffs in Cook County, Chicago, Illinois.

20. Defendant JOSEPH ALESIA is an employee of the City of Chicago holding the position of Airport Manager at O'Hare Airport within the Department of Aviation. At all times relevant he has been one of both Plaintiffs' immediate supervisors and responsible for determining the terms, conditions, and benefits of employment of Plaintiffs. He is sued in his individual capacity. Defendant ALESIA harmed Plaintiffs in Cook County, Chicago, Illinois.

21. Defendant KEVIN MARTIN is an employee of the City of Chicago holding the position of Airport Manager at O'Hare Airport within the Department of Aviation. At all times relevant he has been one of both Plaintiffs' immediate supervisors and responsible for determining the terms, conditions, and benefits of employment of Plaintiffs. He is sued in his individual capacity. Defendant MARTIN harmed Plaintiffs in Cook County, Chicago, Illinois.

FACTS COMMON TO ALL COUNTS

22. This is a complaint for political discrimination in the overtime distribution system among the Motor Truck Drivers at O'Hare Airport, Department of Aviation, Chicago, Illinois, as well as for retaliation for protected exposure and reporting of same by Plaintiffs HERNANDEZ and TERMINI.

23. Plaintiff HERNANDEZ is and has been an MTD (Title Code 7183) with

Defendant CHICAGO since October 1, 1998 and has worked for the last 21 year at O'Hare Airport, Department of Aviation.

24. Plaintiff TERMINI was hired by Defendant CHICAGO on August 3, 1992 as an Auto Parts Man and assigned to the Department of Aviation. He has worked consecutively in the Department of Aviation since his original hire date, becoming a full time, career service MTD in July 1993.

25. The Department of Aviation has an essential and important need for immediately available MTDs who are certified to work on the airfields.

26. Such MTDs are required to undergo airfield certification training consisting of learning how to communicate with the Air Traffic Control Towers, read the runway and taxiway signage, and be alert at all times for dangerous emergent weather, suspicious activity as well as emergency activity requiring immediately available emergency manpower.

27. The MTDS are, in fact, essential service workers, and are of vital important to public safety at O'Hare Airport, including to passengers in planes taking off from, and landing on, O'Hare's airfields.

28. The MTDs are also of vital importance in watching for suspicious activity, keeping animals under control and out of the airfield, and ensuring that spills and other dangerous conditions that could threaten the safety of airline passengers are

immediately reported and attended to. In that sense, the O'Hare MTD's are the first line of defense for the public against natural and manmade hazards on the airfields.

29. As a result of the extreme importance of MTD positions at O'Hare, there is a great deal of overtime work that needs to be performed by these MTDs in order for there to be constant, sufficient, and immediately available manpower at O'Hare at all times to contend with emergencies that might endanger landing aircraft.

30. This overtime is also extremely lucrative, being worth time-and-a-half to, at times, double-time of the MTD's regular hourly rate. Given the extreme importance of these positions for the City and the public welfare of all O'Hare Airport's users, and the need for these MTD's near constant presence, the overtime pay is a necessary incentive to attract qualified drivers to these jobs, and to retain those who are experienced and trusted to navigate the complex work of Commercial Motor Vehicle operation on the airfield side of one of the world's busiest airports.

31. Despite that the MTDs are covered by a collective bargaining agreement that requires equalization of overtime among bargaining unit members, the recent practice, in fact, is that overtime distribution at the O'Hare Airport has been distributed as remuneration for political favors among the MTDs by Defendants.

32. While the collective bargaining agreement requires overtime equalization, the lack of oversight of the distribution and the lack of implementing rules as to overtime has allowed Defendants to manipulate it. For example, overtime will be "equalized"

among MTDs working in certain assignments, but not over the whole class of MTDs as the contract requires. The MTDs in those assignments are often the ones willing to perform political work on and off duty for Defendants.

33. The same problem plagues the assignment of trucks, equipment, and assignments at O'Hare Airport among the MTDS.

34. For example, the MTD's prefer to drive newer, safer trucks, prefer training room assignments, prefer working in Lead Driver spots when performing airfield driver work, and prefer to utilize newer, safer equipment. The determination of assignments and equipment among the MTD's, however, is also subject to manipulation and lack of oversight such that Defendants have been able to manipulate the system to compensate MTDs for political favors.

35. The central First Amendment problem raised in this Complaint is that the overtime and assignments are being distributed on the basis of political affiliations, political contributions, political work, and political favoritism.

36. Plaintiff HERNANDEZ, despite having 21 years of seniority, has in 2016 and 2017 and 2018 been deprived of overtime amounts that he should have received via equalization, but did not receive because of the political discrimination occurring in its distribution.

37. Defendant Deputy Commissioner HELM has a history of using public resources

for improper reasons, such as, for example, he was found by the Illinois Office of the Executive Inspector General in 2015 to have used working time while at the Illinois Department of Transportation to make personal phone calls, used a state vehicle to visit non-employees during working hours, driving non-employees in the state vehicle during working hours. *See OEIG Case Number 11-02070.*

38. In this case, on numerous occasions in 2016, 2017, and 2018, and, on information, in earlier years, certain MTDs were required by Deputy Commission and Defendant HELM to perform political work for certain local Democratic precincts within the City of Chicago while on duty, and, at times on City equipment.

39. At the same time, MTDs would be expected to perform such work off duty as well, which would result in them being given more overtime and preferred assignments/equipment.

40. Such political work would take the form of delivering political materials to certain Democratic precinct(s), delivering contributions to certain Democratic precincts, sometimes on City time and with City equipment, and sometimes on the selected MTD's own time but at the behest of the Department's Deputy Commissioner HELM and/or Airport Managers ALESIA and MARTIN.

41. In return for performing such work, the selected MTDs would be given more overtime opportunities in the course of their work at O'Hare, would be given the better equipment, and would be given the preferred assignments.

42. All of the foregoing intentional manipulation of the overtime system, equipment distribution system, and assignment distribution system was completed by Defendants HELM, ALESIA, and MARTIN.

43. On information and belief, higher management officials were and have been aware of the problem, but have not done anything to rectify it.

44. For example, HERNANDEZ filed a class action union grievance alleging improper distribution of overtime, which included for political reasons, and even brought the issue to the attention of Defendant RHEE.

45. Some MTDs, refusing to perform political favors for Defendants, were punished for such refusals by being deprived, by Defendants HELM, ALESIA, and MARTIN, by being denied overtime assignments, preferred assignments, preferred equipment, and preferred truck assignments.

46. As a result of the aforementioned actions, the overtime distribution has become extremely skewed, with some MTDs earning as much as \$20,000 or more extra per year in overtime, and other MTDs only earning a few thousand dollars per year in overtime.

47. Plaintiff HERNANDEZ on numerous occasions reported the unethical and unlawful factors being used to determine overtime, assignment, equipment, and truck distribution to his superiors, including to RHEE and to Human Resources.

48. When nothing changed in the system, Plaintiff HERNANDEZ made official

reports of political discrimination in benefits and terms and conditions of employment to the City of Chicago Office of the Inspector General in 2018.

49. The IG commanded HERNANDEZ to appear at its offices for interviews in April and August 2018 by sending notices for him to appear that would be relayed to Defendant HELM, who would then relay the request to HERNANDEZ.

50. Since HERNANDEZ' IG interview in April 2018, he has experienced shunning, segregation, further deprivation of overtime and premium assignments compared to amounts he used to receive, and bullying at O'Hare.

51. For example, HERNANDEZ has been bullied, shunned, segregated, and teased for being a snitch and a canary at the behest of HELM, ALESIA, and MARTIN.

52. The IG also commanded Plaintiff TERMINI to appear at its offices as part of its investigation, again, by sending notice for him to appear to the Department of Aviation, which notice would be distributed to HELM for distribution to TERMINI.

53. When TERMINI was notified of his interview in August 2018, HELM accompanied him to the truck that would drive him to the interview and told TERMINI, in intimidating manner, that he should "not tell the IG anything that TERMINI is uncomfortable telling them," while TERMINI completely cooperated with the IG, he was extremely intimidated by HELM.

54. Since their IG interviews, both Plaintiffs have experienced hellacious bullying

and intimidation at the workplace, and even further deprivations of overtime, preferred equipment and trucks, shunning, name-calling, insinuations, segregation, and belittling.

55. TERMINI, for example, was written up three times in November 2018 alone, all on trumped-up, false, and spurious allegations, and all coming from HELM, ALESIA, and MARTIN.

56. TERMINI has experienced daily segregating behavior, such as by HELM and his crew stating words to the effect that “Charlie’s here, better be quiet,” making farting noises at TERMINI over the radio, interrogating TERMINI about “what his problem is,” and holding secret meetings about TERMINI in which they discussed submitting him to write-ups.

57. As to secret meetings, TERMINI knows that at least one such meeting was had about him with a higher-up Department of Aviation official because that official told TERMINI about the meeting.

58. Both HERNANDEZ and TERMINI have reported the workplace bullying and harassment following their cooperation with the IG to their superiors, without any recourse whatsoever and without any cessation of the hostile and offensive behavior towards them.

CLASS ALLEGATIONS

59. Plaintiffs bring this action individually and, pursuant to Federal Rules of Civil

Procedure 23(b)(1)(A) and (B), (b)(2) and/or (b)(3), as a class action on behalf of a class of persons defined as “All former and current Motor Truck Drivers of the City of Chicago who have been assigned to the Department of Aviation who have been deprived of overtime since November 18, 2016 for political reasons.”

60. The named Plaintiffs/class representatives and the absent class members each and all have tangible and legally protectable interests at stake in this action.

61. The claims of the named class representatives have a common origin and share a common basis, all originating from the same illegal practices of the Defendants.

62. The proposed class representatives state claims for which relief can be granted that is typical of the claims of all class members and, if brought and prosecuted individually, the claims of each class member would necessarily require proof of the same material and substantive facts.

63. The members of the class are so numerous that joinder of all members is impracticable. The class is ascertainable because the names and addresses of all class members can be identified in the CITY’s employment records.

64. Common questions of law and fact exist between Plaintiffs and all class members, including whether Defendants distributed overtime, assignments, trucks, and equipment based on political affiliation and political activity in violation of the First Amendment under 42 U.S.C. § 1983?

65. Named Plaintiffs have interests that are coextensive with and not antagonistic to

the interests of absent class members, and will be able to undertake and truly protect the interests of the absent class members.

66. Class counsel is being sought and will be obtained after filing of this suit.

67. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct.

68. The Defendants have acted or refused to act on grounds generally applicable to the class.

COUNT 1: 42 U.S.C. § 1983 POLITICAL RETALIATION/DISCRIMINATION
(HERNANDEZ v. Defendants HELM, ALESIA, and MARTIN)

69. Plaintiffs incorporate by reference and restate herein by express reference all other paragraphs of this complaint.

70. At all times Defendants HELM, ALESIA, and MARTIN have acted under color of law and authority in their positions as Deputy Commissioner and Airport Managers towards Plaintiff HERNANDEZ.

71. At all times Defendants HELM, ALESIA, and MARTIN have acted under color of law and authority in their positions as Deputy Commissioner (HELM) and Airport Managers (ALESIA and MARTIN) as final policymakers for the CITY and the Department of Aviation, including, but not limited to, the distribution of overtime, equipment, trucks, and assignments among the employees under their supervision and control.

72. The First Amendment protects a wide spectrum of free speech and association, including a public employee's right to free association and to support or not support a political candidate or political party of their own choosing.

73. By refusing to engage in political work at the request of Defendants HELM, ALESIA, and MARTIN, for the benefit of the Democratic party, including toward certain local Democratic party precincts, HERNANDEZ was engaged in the exercise of his First Amendment rights.

74. Defendants HELM, ALESIA, and MARTIN have asked HERNANDEZ to perform political work for the Democratic party both on and off City time, and HERNANDEZ has refused to do such work.

75. As a result of HERNANDEZ' protected refusals, Defendants HELM, ALESIA, and MARTIN deprived him and similarly-situated MTDs of overtime, preferred equipment, preferred assignments, and equal treatment that he would have otherwise received were same being distributed equally, as called for by the collective bargaining agreement.

76. As a direct and proximate cause of HERNANDEZ' protected refusals to engage in political work for Defendants HELM, ALESIA, and MARTIN, HELM, ALESIA, and MARTIN personally, individually, and directly deprived HERNANDEZ of his First Amendment rights and privileges to be free from forcibly

having to engage in political work/speech that they did not support, *to wit*, support of certain Democratic precincts and candidates that he did not desire to support.

77. As a direct and proximate cause of HERNANDEZ' protected refusals to engage in political work for Defendants HELM, ALESIA, and MARTIN, HERNANDEZ suffered losses of overtime of thousands of dollars in overtime that he would have otherwise received had the overtime and assignments been distributed equally as required under the collective bargaining agreement.

78. The actions of Defendants HELM, ALESIA, and MARTIN were all under color of law at all material times hereto.

79. The actions of Defendants HELM, ALESIA, and MARTIN violated Plaintiff's rights guaranteed under the United States Constitution and 42 U.S.C. § 1983.

80. At all times relevant, the distribution of employment benefits for political reasons is a matter of grave public concern, as evidenced by the existence of the *Shakman* consent decree, and Plaintiff's refusals and reporting of same to the IG constituted speech on a matter of public concern.

81. At no time was Plaintiff acting pursuant to his official duties in reporting the matters to the IG, which is an external, independent agency from the Department of Aviation.

82. At no time did Plaintiff's refusals and reporting constitute mere personal grievances,

but expressed protected concern for the distribution of public monies to CITY employees for political reasons and concern for fellow MTDs being deprived of such monies for not participating in the schemes.

83. HERNANDEZ filed a union grievance on his own behalf and on behalf of all adversely-affected MTDs at O'Hare Airport, and same was set for arbitration with the City, but he was advised that his union pulled the grievance from arbitration without giving any reason for doing so.

84. Before the grievance was pulled by the union, HERNANDEZ had resigned his position as Trustee with the Local 700 Executive Board in early 2018 after HERNANDEZ decided he no longer wanted himself or his family to be associated with Local 700's President.

85. HERNANDEZ, accordingly, exhausted his remedies under the collective bargaining agreement because the union pulled their grievance and he has no contractual remedy.

86. The contract does not provide any remedy for political discrimination and Plaintiff and similarly-situated MTDs have no meaningful remedy under the contract for same.

WHEREFORE, Plaintiff requests that this Court enter judgment in his favor and against Defendants, and order the following affirmative and other relief: (1) enjoin Defendants from engaging in acts of retaliation against Plaintiffs;

(2) pay backpay, back benefits, and damages to Plaintiffs for actual, general, special, compensatory damages, including emotional distress in amounts to be determined at trial; (3) pay the costs of litigating this action and reasonable attorneys' fees; (4) order Defendants to cease and desist from retaliating against Plaintiffs in contravention of their federal constitutional rights; and, (5) order such other relief as this Court deems just and proper.

**COUNT 2: MONELL - 42 U.S.C. § 1983 DEPRIVATION OF FIRST AMENDMENT
PROTECTED RIGHT TO FREEDOM OF SPEECH
(HERNANDEZ v. Defendant CHICAGO)**

87. Plaintiffs incorporate by reference and restate herein by express reference all other paragraphs of this complaint.

88. At all times, Defendants HELM, ALESIA, and MARTIN had final policymaking authority for and as to Defendant CITY, and for the CITY as to matters falling within the purview of the CITY's Department of Aviation, including as to the distribution of overtime, trucks, assignments within the MTD ranks assigned to O'Hare Airport.

89. At all times, Defendants HELM, ALESIA, and MARTIN established a widespread custom for and as to Defendant CITY, and for the CITY as to matters falling within the purview of the CITY's Department of Aviation, including as to the distribution of overtime, trucks, assignments within the MTD ranks assigned to O'Hare Airport. Such

a widespread custom was to award more overtime work to MTDs who participated in Defendants' desired political work.

90. Defendants HELM, ALESIA, and MARTIN, by express acts and customs, and with the consent and deliberate knowing indifference of RHEE, distributed overtime to those MTDs performing political favors at their behest and request, resulting in the deprivation of overtime to those MTDs who refused to perform such work.

91. Under color of law, Defendants CITY and RHEE ratified and acted with deliberate indifference to the unconstitutional acts of HELM, ALESIA, and MARTIN as to Plaintiffs' deprivations.

92. The pressuring of MTDs to perform political work on and off duty, and to make contributions was so pervasive and widespread among the MTDs as to constitute official policy, custom, and practice of the CITY with respect to the distribution of such benefits and emoluments of employment.

93. At all times relevant, the distribution of employment benefits for political reasons is a matter of grave public concern, as evidenced by the existence of the *Shakman* consent decree, and Plaintiffs' refusals and reporting of same to the IG constituted speech on a matter of public concern.

94. At no time were Plaintiffs acting pursuant to their official duties in reporting the matters to the IG, which is an external, independent agency from the Department of Aviation.

95. At no time did Plaintiffs' refusals and reporting constitute mere personal grievances, but expressed protected concern for the distribution of public monies to CITY employees for political reasons and concern for fellow MTDs being deprived of such monies for not participating in the schemes.

96. The violations of Plaintiffs' constitutional First and Fourteenth Amendment rights resulted from Defendants CITY's official custom and practice, and express acts, taken under color of law, which, on Defendant RHEE's part resulted from little or no action to end the unconstitutional abusive conduct by at least Defendants HELM, ALESIA, and MARTIN.

97. Defendants' conduct and omissions were the actual and proximate cause of the deprivations of Plaintiffs' First and Fourteenth Amendment rights.

98. RHEE's and the CITY's policies, customs, practices, and acts regarding distribution of overtime, equipment, trucks, and assignments were the moving force behind the adverse actions incurred by Plaintiffs, who refused to comply with practices and acts requiring them to engage in acts of political work in order to receive preferred employment benefits.

99. Plaintiffs have suffered actual harm and emotional distress as a result of Defendants' actions, including mental anguish, humiliation, degradation, and outrage.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and against Defendants, and order the following affirmative and other relief: (1) enjoin

Defendants from engaging in acts of retaliation against Plaintiffs; (2) pay backpay and back benefits and damages to Plaintiffs for actual, general, special, compensatory damages, including emotional distress in amounts to be determined at trial; (3) pay the costs of litigating this action and reasonable attorneys' fees; (4) order Defendants to cease and desist from retaliating against Plaintiffs in contravention of their federal constitutional rights; and, (5) order such other relief as this Court deems just and proper.

**COUNT 3: 42 U.S.C. § 1983 DEPRIVATION OF FIRST AND FOURTEENTH
AMENDMENT RIGHTS TO BE FREE FROM RETALIATION**
(HERNANDEZ and TERMINI v. HELM, ALESIA, and MARTIN)

100. Plaintiffs incorporate by reference and restate herein by express reference all other paragraphs of this complaint.

101. The First and Fourteenth Amendments of the United States Constitutions prohibit retaliation against persons for making reports that are otherwise protected by law, including whistleblower complaints and government complaints about political discrimination.

102. At all times, Defendants HELM, ALESIA, and MARTIN have known about Plaintiff HERNANDEZ' and TERMINI's cooperation with the Inspector General investigations into political favoritism and discrimination in employment benefits and emoluments among the MTDs at O'Hare Airport.

103. At all times, Defendants HELM, ALESIA, and MARTIN, acting under color of

law, have caused a campaign of bullying, intimidation, segregation, discrimination, and belittling of HERNANDEZ and TERMINI as a result of their protected conduct and reporting.

104. At all times, Defendants HELM, ALESIA, and MARTIN have deprived Plaintiffs of rights, privileges, and immunities guaranteed by the Fourteenth Amendment of the United States Constitution, including the right to be free from harassment and discrimination by Defendants and Defendants' agents because of Plaintiffs' protected reporting of rampant political discrimination to the IG.

105. Plaintiffs have suffered actual harm and emotional distress as a result of Defendants' actions.

106. As a direct and proximate cause of such retaliation for Plaintiffs' protected reporting of unlawful political discrimination, HERNANDEZ and TERMINI have suffered discrimination and harassment, including emotional distress and tangible losses such as losses of overtime they would have otherwise received by the proper execution of the overtime equalization called for by the collective bargaining agreement.

107. On November 17, 2018, Defendants issued TERMINI a 30-day suspension for violations of rules in an unheard of fashion and in retaliation for his cooperation with the IG Investigation.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and against Defendants, and order the following affirmative and other relief: (1) enjoin

Defendants from engaging in acts of retaliation against Plaintiffs; (2) pay back pay and back benefits, as well as damages to Plaintiffs for actual, general, special, compensatory damages, including emotional distress in amounts to be determined at trial; (3) pay the costs of litigating this action and reasonable attorneys' fees; (4) order Defendants to cease and desist from retaliating against Plaintiffs in contravention of his federal constitutional rights; and, (5) order such other relief as this Court deems just and proper.

**COUNT 4: VIOLATION OF ILLINOIS' WHISTLEBLOWER ACT FOR
DISCLOSURES AND REFUSALS**
(HERNANDEZ and TERMINI v. CITY, RHEE, HELM, ALESIA, and MARTIN)

108. Plaintiffs incorporate by reference and restate herein by express reference all other paragraphs of this complaint.

109. At all times relevant, Defendants CITY, RHEE, HELM, ALESIA, and MARTIN have been employers within the meaning of Illinois' Whistleblower Act, 740 ILCS 174/5, *et seq.* because they are all individuals, or, in the CITY's case, a corporation and unit of local government, and because the individual Defendants have been acting within the scope of their authority on behalf of the CITY in dealing with Plaintiffs.

110. At all times relevant, HERNANDEZ and TERMINI have been employees of Defendants within the meaning of Illinois' Whistleblower Act, 740 ILCS 174/5, *et seq.*

111. Section 15 of Illinois' Whistleblower Act, 740 ILCS 174/5, *et seq.*, provides that

an employer “may not retaliate against an employee who discloses information “to a government or law enforcement agency where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

112. Section 20 of Illinois’ Whistleblower Act, 740 ILCS 174/5, *et seq.*, prohibits an employer from retaliating against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation.

113. Plaintiffs HERNANDEZ and TERMINI have at all times been Whistleblowers within the meaning of Illinois’ Whistleblower Act who have made protected disclosures to the IG, and who have refused to participate in an illegal activity, *to wit*, engaging in political favors for distribution of more overtime from the CITY.

114. Plaintiffs have reported such illegal conduct to an external agency, the IG. *See Mislav v. City of Chicago*, No. 16 cv 4202 (holding that reports to the City OIG by City employees are enough for a claim under the IWA).

115. Defendants HELM, ALESIA, and MARTIN, have at all times known about Plaintiffs’ participation in the IG investigation, including because HELM distributed notices to attend investigation meeting to HERNANDEZ and TERMINI, and because HELM himself escorted TERMINI to the truck to attend such a meeting.

116. Defendants have also all discussed Plaintiffs’ involvement with the IG

investigation in the presence of Plaintiffs on multiple occasions.

117. On November 17, 2018, Defendants issued TERMINI a 30-day suspension for violations of rules in an unheard of fashion and in retaliation for his cooperation with the IG Investigation.

118. Defendants' adverse actions against Plaintiffs include, but are not limited to, further depriving Plaintiffs of overtime and preferred assignments/equipment, bullying, harassing, segregated, and, in TERMINI's case, imposing baseless and retaliatory discipline all at the same time.

119. Defendants have engaged in such adverse actions as retaliation for Plaintiffs' (a) protected refusals to engage in improper political activity in exchange for employment benefits; and, (b) protected reporting of such improper activity to the City IG and cooperation with same in its investigation.

120. Plaintiffs have suffered economic and non-economic damages, including loss of overtime pay, loss of preferred assignments/equipment, emotional distress, humiliation, anguish, and outrage.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and against Defendants, and order the following affirmative and other relief: (1) enjoin Defendants from engaging in acts of retaliation against Plaintiffs; (2) pay Plaintiffs back pay with interest and compensation for damages in an amount to be determined at trial sustained as a result of the violations; (3) pay

the costs of litigating this action, expert witness fees, and reasonable attorneys' fees; (4) order Defendants to cease and desist from retaliating against Plaintiffs in contravention of his federal constitutional rights; and, (5) order such other relief as this Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY

RESPECTFULLY SUBMITTED,

**HECTOR HERNANDEZ
CHARLES TERMINI**

/s Cass T. Casper

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