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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0432**

Abraham Algadi,
Relator,

vs.

City of Pine Island,
Respondent.

**Filed March 17, 2014
Affirmed
Halbrooks, Judge**

City of Pine Island City Council

Andrea B. Niesen, Bird, Jacobsen & Stevens, P.C., Rochester, Minnesota (for relator)

Julie A. Fleming-Wolfe, St. Paul, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this certiorari appeal, relator challenges the termination of his employment as city administrator and zoning administrator for respondent city, arguing that the city council failed to follow proper procedure. We affirm.

FACTS

Appellant Abraham Algadi and respondent City of Pine Island entered into an employment agreement in early 2010 under which Algadi was hired to serve as the city administrator and zoning administrator. The end-date of the agreement was March 31, 2015, but the agreement provided that if Algadi's employment was terminated without cause before then, he would be entitled to certain termination benefits.

Paragraph 15 identified the benefits due to Algadi "[i]n the event that [Algadi's employment] is terminated by [the city] without cause" as six months' salary and benefits plus accumulated vacation pay and 50% of accumulated sick pay. The agreement expressly provided in paragraph 16 that "[n]othing in this Agreement shall prevent, limit or otherwise interfere with the right of [the city] to terminate the services of [Algadi] at any time, for any reason, subject only to the provisions of this Agreement and statutory requirements."

On January 15, 2013, immediately after the city council meeting was called to order and before any agenda item was addressed, Councilmember Novak moved to add "an Agenda Item O, under Administration and Legal, considering the elimination of the position of City Administrator and termination of the Administrator's contract." A majority approved the motion.

Upon reaching item O in the agenda, Councilmember Novak moved to eliminate the position of city administrator and to direct staff to prepare the necessary amendments to the city code. Councilmember Novak stated that his motion was intended as a cost-savings measure and not a reflection on Algadi's performance. He noted that in light of

the city's budget deficit and additional expenses that were anticipated, "[w]e simply cannot afford the position right now." The city attorney advised the council that the proposed code amendments would require additional action at the next council meeting and that elimination of the position was procedurally distinct from the termination of an employment agreement. Algadi was present at the meeting and stated that the council's action was "not news, obviously" and that the mayor had "been honest and forthcoming with [him] on—on what the plan is." Algadi also offered to work with the council "on a transition." After discussion and public comment, a majority of the council voted to approve the motion to eliminate the city-administrator position.

Councilmember Novak moved to terminate Algadi's employment agreement effective immediately and to "direct the payment of all amounts due to [Algadi] under that contract." The city attorney read aloud the contract provision defining the benefits due to Algadi for termination without cause. He also clarified that the termination of the agreement could be accomplished in a single action by the city council, stating, "So that would be the end of the job. Immediately." After discussion and public comment on the motion, a majority of the council voted to terminate the agreement. Algadi then made a short statement, and the meeting adjourned.

Approximately one month later, Algadi challenged the termination of his employment and requested a public hearing as provided by Pine Island, Minn., City Code § 2.09, subd. 2 (2008). On February 15, the city rejected Algadi's hearing request, stating that section 2.09 did not apply because the agreement expressly disclaimed any limitations on the city's right to terminate the relationship at any time for any reason and

noting that Algadi had accepted the termination benefits outlined in the agreement. At its February 19, 2013 meeting, the city council unanimously reallocated the duties of the city administrator to other city staff or elected officials, thereby effectively eliminating the position as it had previously existed. This appeal follows.

D E C I S I O N

A timely petition for a writ of certiorari is the exclusive method by which an employee may secure judicial review of a termination decision by an executive body with less than statewide jurisdiction. *See Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 237, 239 (Minn. 1992). Contrary to the city’s argument, the elimination of the employee’s position does not alter the application of this rule. *See Tischer v. HRA of Cambridge*, 693 N.W.2d 426, 429 (Minn. 2005) (when a former HRA employee challenged termination of employment contract and elimination of position, proper remedy was certiorari appeal). “Our review on writ of certiorari is limited to an inspection of the record to determine the propriety of the city council’s jurisdiction and procedures and, with respect to the merits, to determine whether its decision was arbitrary, oppressive, unreasonable, fraudulent, or unsupported by evidence or applicable law.” *Reierson v. City of Hibbing*, 628 N.W.2d 201, 204 (Minn. App. 2001).

Algadi contends that the city utilized improper procedures to terminate his employment and that, therefore, the purported termination was ineffective. Specifically, he argues that (1) the elimination of the city administrator position and termination of his agreement were improperly considered by the city council at its January 15, 2013

meeting and (2) the city council violated Pine Island, Minn., City Code § 2.09, subd. 2, when it terminated his employment without notice and a hearing.

We first address Algadi's contention that a unanimous vote by the city council was required to take up consideration of the motions to terminate the agreement and to eliminate the city-administrator position at the January council meeting. The city code does not specify the procedure for adding an item to the agenda, but provides that *Robert's Rules of Order (Newly Revised)* shall govern procedures not addressed by the city code. *Robert's Rules of Order (Newly Revised)* does not require unanimous consent to add an agenda item unless the agenda has already been adopted. *Robert's Rules of Order (Newly Revised)* § 41, at 372-73 (11th ed. 2011). There is no indication that the agenda had been adopted before this agenda item was added. A majority vote was therefore sufficient, and the item was properly added to the agenda.

We next address Algadi's argument that, despite the language of paragraphs 15 and 16 in the agreement, his employment could not be terminated without written notice, a hearing, and action at two separate council meetings as provided by Pine Island, Minn., City Code § 2.09, subd. 2. The question before us is whether the procedures outlined in section 2.09, subdivision 2, of the city code apply to the termination of Algadi's employment. We conclude that under the circumstances of this case, they do not.

Section 2.09, subdivision 2, provides:

Appointment and Removal. The City Administrator shall be appointed by the Council for an indefinite term. The Administrator shall not be removed except by affirmative action taken by the Council twice at two regular meetings held within 60 days. The action taken at the first such meeting shall be an expression of intent to vote thereon at the second such regular meeting not to be held sooner than ten days thereafter. If, at any time after the Administrator has completed six months of continuous service, the Council takes such action, the City Administrator may within 30 days after written notice of removal, request a public hearing which the Council must grant and which must be started within 30 days after the request.

This entire subdivision of the city code is inconsistent with the terms of the parties' written employment agreement. The code provides that the city administrator shall be appointed for an indefinite term, while the agreement set a five-year term that was terminable at any time by either party. The code requires a series of actions at two regular city council meetings before the city administrator can be "removed," while the agreement provided for termination "without cause" and "at any time, for any reason," subject only to payment of certain benefits if termination was without cause. Nowhere in the code is there language relating to the provision of termination benefits. And yet the city paid, and Algadi accepted, a substantial payment in connection with the termination of his employment.

Because of these inconsistencies, the parties' written agreement and section 2.09, subdivision 2, could not both have defined the duties of the parties with respect to the termination of Algadi's employment. We conclude that by acting consistently with the provisions of the written employment agreement, and accepting the termination benefits

due only under its terms, Algadi confirmed that the written agreement defined the parties' obligations with respect to the termination of his employment.

By his own statement, Algadi was on notice that the city council would consider the termination of his employment at its January 15, 2013 meeting. Despite this awareness, Algadi did not request a hearing or in any other way reference the procedures found in the code. For its part, the city council consistently referenced and tracked the procedures and duties outlined in the written agreement and not the city code. The city attorney advised the council that the agreement could be terminated "immediately," and the city council expressly directed the payment of termination benefits to Algadi as provided by the agreement. It was only after both parties had fully performed their obligations under the terms of the written agreement that Algadi demanded the incompatible procedures found in the city code.

Because Algadi was present and acquiesced in the procedures utilized by the city council to terminate his employment and later accepted the termination benefits due to him under the agreement, Algadi has waived any right he may otherwise have had by operation of section 2.09, subdivision 2, of the Pine Island City Code. *See Frandsen v. Ford Motor Co.*, 801 N.W.2d 177, 182 (Minn. 2011) ("Waiver [of a right] may be express or implied—knowledge may be actual or constructive and the intent to waive may be inferred from conduct." (quotation omitted)). Algadi chose the termination benefits due under the agreement rather than notice and hearing rights provided by the code. We therefore conclude that the city followed proper procedure when it terminated Algadi's employment without formal notice or a hearing, and that the decision was not

arbitrary, oppressive, unreasonable, fraudulent, or unsupported by evidence or applicable law.

Affirmed.