

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Elaine Halvorson,

Complainant,

vs.

Richard Nelson,

Respondent.

ORDER ON REQUEST
FOR
ATTORNEY'S FEES

On November 4, 2004, Elaine Halvorson filed a complaint with the Office of Administrative Hearings against Richard Nelson alleging violations of Minn. Stat. §§ 211B.07 and 211B.09. Ms. Halvorson is an employee of the City of Warren and Richard Nelson is the mayor of Warren. The complaint alleged that Mr. Nelson made threats against Ms. Halvorson because she had expressed support for Mr. Nelson's opponent in the mayoral election.

By letter dated November 18, 2004, Ms. Halvorson withdrew her complaint. On December 3, 2004, counsel for Mr. Nelson submitted a written request for attorney's fees and costs, maintaining that Ms. Halvorson's complaint was frivolous. Pursuant to Judge Neilson's letter to the parties, Mr. Nelson submitted affidavits in support of his request on December 13, 2004. Ms. Halvorson filed an affidavit in response to the request on December 20, 2004, and Mr. Nelson submitted a reply on December 23, 2004.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That Respondent's request for an award of attorney's fees and costs in this matter is DENIED.

Dated: December 28, 2004

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

/s/ Allan W. Klein

Allan W. Klein
Administrative Law Judge

/s/ Kathleen D. Sheehy

Kathleen D. Sheehy
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

On November 4, 2004, Elaine Halvorson filed a complaint with the Office of Administrative Hearings against Richard Nelson alleging violations of Minn. Stat. §§ 211B.07 and 211B.09. Ms. Halvorson is an employee of the City of Warren and Richard Nelson is the mayor of Warren. The complaint alleged that Mr. Nelson threatened to fire Ms. Halvorson or to “teach her a lesson” because she had put a lawn sign in her yard in support of Mr. Nelson’s opponent in the mayoral election.

On November 5, 2004, Administrative Law Judge Bruce Johnson found that the complaint set forth a prima facie violation of Minn. Stat. § 211B.09, but not § 211B.07. Minn. Stat. § 211B.09 provides that:

An employee or official of the state or of a political subdivision may not use official authority or influence to compel a person to apply for membership in or become a member of a political organization, to pay or promise to pay a political contribution, or to take part in political activity. A political subdivision may not impose or enforce additional limitations on the political activities of its employees.

Judge Johnson determined that, if the evidence at a hearing were to establish that the Respondent did, in fact, threaten reprisals against the Complainant for allowing a lawn sign for the Respondent’s opponent to be displayed in the Complainant’s yard, those facts would arguably establish a violation of Minn. Stat. 211B.09. The matter was then assigned to a panel of three Administrative Law Judges and scheduled for an evidentiary hearing.

By letter dated November 18, 2004, however, Ms. Halvorson withdrew her complaint. On December 3, 2004, Respondent submitted a written request for attorney’s fees and costs. Respondent maintains that Ms. Halvorson’s complaint was frivolous. Pursuant to Minn. Stat. § 211B.36, subd. 3, the assigned Administrative Law Judge or panel may order a Complainant to pay the Respondent’s reasonable attorney’s fees and costs of the Office of Administrative Hearings if the judge or panel determines the complaint was frivolous.^[1]

A frivolous claim is one that is without any reasonable basis in law or equity and could not be supported by a good faith argument for a modification or reversal of existing law.^[2] Minnesota Rules of General Practice 9.06(b)(3) defines “frivolous litigant” to include:

A person who institutes and maintains a claim that is not well grounded in fact and not warranted by existing law ... or that is interposed for any

improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigating the claim.

Respondent has submitted his own affidavit as well as affidavits from Marlin Anderson and Laurie Forslund in support of his motion for attorney's fees. According to these affidavits, Marlin Anderson, a former City of Warren employee, informed Respondent that Ms. Halvorson had a lawn sign in her yard supporting his opponent (Gary Peterson). Mr. Anderson jokingly indicated that Ms. Halvorson was not very smart to do such a thing. Respondent related this conversation to Robert Brooks, the City Clerk for the City of Warren. Mr. Brooks is Ms. Halvorson's supervisor. Respondent maintains that he mentioned this conversation to Mr. Brooks for his information only and that he did not instruct Mr. Brooks to take any action or to do anything because of this conversation. In addition, Laurie Forslund, an insurance agent who resides in the City of Warren, mentioned to Respondent that he had seen a lawn sign in support of Respondent's opponent in what he thought was the yard of a Jeff Wohlers, another city employee. Respondent told Mr. Forslund that there was "one City employee who had a 'Gary Peterson for Mayor' sign in his yard but no name was mentioned."^[3]

Respondent maintains that he did not use his official authority to compel the Complainant or anyone to take part in a political activity, nor did he impose limitations on the political activities of his employees. In addition, Respondent argues that he did not threaten any employee with retaliation or the loss of employment for supporting his opponent in the campaign.

In her filed affidavit, Complainant states that, after Respondent spoke to Mr. Brooks, Mr. Brooks warned her that Respondent was on a "rampage" and in "retaliation mode again." In addition, Complainant states that, on November 4, 2004, Respondent spoke to Mr. Brooks again and told him to either find a way to reduce her hours or to fire her. According to Complainant, Mr. Brooks related this conversation to Annette Maurstad, another city employee, the following day. And finally, Complainant maintains that Robert Greer, another city employee, informed her that there was "talk around town" about her lawn sign.

In response to Complainant's claim that Respondent sought to reduce her hours as a means of retaliation, Respondent maintains that there was "a verbal indication from City Consultants indicating that Ms. Halvorson's job should be a part time job."^[4]

Respondent admits to having conversations with at least two people about Ms. Halvorson's lawn sign. Whether what Respondent said to these people, particularly Mr. Brooks, was intended to be or could be interpreted as a threat of reprisal is a factual determination that the panel could only make after an evidentiary hearing. Moreover, Respondent's claim that there was "a verbal indication from City Consultants indicating that Ms. Halvorson's job should be a part time job," raises a further factual issue with respect to Ms. Halvorson's retaliation claim, and Ms. Halvorson's own affidavit asserts that her supervisor warned her of retaliation after he spoke to Respondent about the yard sign in Ms. Halvorson's yard. The panel concludes that Respondent's affidavits are insufficient to establish that Ms. Halvorson's complaint was frivolous, or lacking in

any reasonable basis in fact or law. Therefore, Respondent's request for attorney's fees and costs is denied.

B.L.N., A.W.K., K.D.S.

^[1] Respondent also sought costs pursuant to Minn. Stat. § 211B.37. This section merely governs how the OAH assesses its costs against the state general fund or counties depending on the nature of the election at issue (e.g., statewide office, county or city).

^[2] Maddox v. Department of Human Services, 400 N.W.2d 136, 139 (Minn. App. 1987).

^[3] Affidavit of Forslund at ¶ 2.

^[4] Respondent's response letter dated December 23, 2004.