

**MONTANA DEPARTMENT OF LABOR & INDUSTRY  
EMPLOYMENT RELATIONS DIVISION  
HUMAN RIGHTS BUREAU**

Jason Johnson,  Charging Party,  vs.  Missoula County Sheriff's Office,  Respondent.	<b>Final Investigative Report</b>  HRB Case 0131016301
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**Recommendation:** Based on my investigation, I find **reasonable cause** to believe unlawful discrimination occurred as alleged in Charging Party's complaint.

**I. Issue Presented**

- A. Did Respondent discriminate against Charging Party in violation of the Montana Human Rights Act (Title 49, Chapter 2), as amended, and the Government Code of Fair Practices (Title 49, Chapter 2), by demoting him because of his political beliefs (support of an opponent's campaign for Sheriff)?
- B. Did Respondent retaliate against Charging Party in violation of the Montana Human Rights Act (Title 49, Chapter 2), as amended, and the Government Code of Fair Practices (Title 49, Chapter 2), after he complained of discrimination to Respondent?

**II. Summary of the Investigation<sup>1</sup>**

**A. Charging Party's Position**

Charging Party, Jason Johnson, said he began work for Respondent in or about July 2005, and performed his duties satisfactorily. In early 2011, he was selected to serve as a Public Information Officer (PIO) for Respondent, a newly-created position. He received three hours of overtime each week as part of his compensation in the PIO position, a flexible schedule and his own office space.

In early 2013, Johnson and another officer, TJ McDermott, began talking about running for sheriff. Johnson told McDermott he would serve as his undersheriff.

On or about April 16, 2013, Sheriff Carl Ibsen informed Johnson that he was removing him from the PIO position because he "didn't want to sideline (Johnson's) career." Johnson said he believes Ibsen wanted to remove him from the PIO position because of his support for McDermott.

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<sup>1</sup> This report constitutes a summary of the investigation, and is limited to witnesses, documents and other evidence relevant to the analysis of the issue presented. The case file may contain additional evidence not included in this report.

On or about April 22, 2013, Johnson said, Respondent advised him that he was not to speak to reporters or post information via social media without the permission of the sheriff – activities that are elements of the PIO's duties. On April 23, 2013, Johnson complained in an e-mail to Patty Baumgart, Missoula County HR Director, that he believed he was being "targeted" because of his political views and his support for McDermott.

Johnson said he was officially removed from the PIO position on or about April 29, 2013.

Charging Party filed a complaint of discrimination with the Human Rights Bureau on June 5, 2013, and also filed a grievance with Respondent over his demotion. In an amended complaint filed on August 7, 2013, he alleges that on June 21, 2013, he and McDermott and another officer were informed that they were required to take vacation leave to attend a meeting over the grievance, rather than attending the meeting during the normal course of their work, as had been the past practice.

Johnson said that on July 11, 2013, he found a copy of a "Law Enforcement Oath of Honor" taped to his computer screen, and he believes this was intended criticize his integrity in pursuing this matter.

Johnson filed an additional amended complaint on September 25, 2013, alleging he was being kept from using his department-issued vehicle to drop his daughter at school on the way to work, while others have done this in the past and continue to do so. He further alleges he is the only full-time employee required to work in a noisy common area called "the pit."

## **B. Respondents' Position**

Respondent, the Missoula County Sheriff's Office, said it employs about 168 people in law enforcement and detention.

Sheriff Carl Ibsen acknowledged Johnson was informed he would be "transitioning out of the PIO program" on or about April 16, 2013.

Ibsen said Johnson previously attended a "rather expensive" training, and on April 10, 2013, informed his supervisor that he'd like to attend again. Johnson said he was willing to use his own money if Respondent was unable to send him. Ibsen said that "put him in a quandary," because he was already transitioning Johnson out of the position. He hadn't set a date, but knew it would be soon.

Ibsen said he reminded Johnson he was informed it was temporary at the beginning of the assignment. He said he asked Johnson to recommend someone for the position, though he had already picked someone a week or ten days before.

Ibsen said the transition had been "in the planning and formulation stages" for about 10 months. He said it was not a demotion.

Ibsen explained that in February or March of 2013 “it was becoming apparent that the Sheriff’s Office Facebook page was becoming the Missoula County Deputy Sheriff’s Association (employee union) Facebook page. He said more oversight was needed, and the responsible supervisor set guidelines and rules.

Ibsen said he asked another employee, Paige Pavalone, to consider the position on about April 1, 2013, and Pavalone accepted a few days later.

In answer to Charging Party’s amended complaint filed August 7, 2013, Ibsen wrote on September 4, 2013, that McDermott and Johnson “should be ashamed of the turmoil they are creating within the department for their own selfish goals, whatever those might be.”

### **C. Charging Party’s Rebuttal**

Johnson said his support of McDermott’s intended campaign for sheriff was known in the office long before he was removed from the PIO position. Others in the office knew as early as November 2012, he said, and he discussed it with his supervisor, Josh Clark, while Clark was still serving as head of the professional standards division and before Clark became undersheriff in early February 2013.

Johnson said he and McDermott began regularly meeting with people in the community about their intended candidacy, including a county commissioner and several retired law enforcement people, in March 2013.

Johnson said Ibsen did not say anything about the PIO position being a temporary assignment when he was placed in the position. He said the first time he heard it described in those terms was when he was called into Ibsen’s office on April 16, 2013, and told he was being removed.

Johnson said his annual performance evaluation in April 2012 would have been a logical place to bring up the temporary nature of the assignment, since the performance review process includes a self-evaluation step where the employee is required to describe his or her vision of the next five years.

As part of that 2012 evaluation, Johnson answered that he intended to continue to work to build up the PIO position. Johnson said that if the position was always intended to be temporary, his stated intent to work to build the position over the next five years should have indicated to Ibsen and Clark, who conducted the evaluation and signed it in August 2012, that there had been a miscommunication.

Johnson said Ibsen proposed that Johnson be promoted to sergeant in December 2012 in order to provide him more credibility with the media. Johnson questioned how that could be reconciled with serving a temporary, rotating assignment.

Johnson said he is making less money now than he was as the PIO, and his new assignment is less desirable. Johnson said Ibsen dislikes his intended running mate, McDermott, and intends to run against McDermott himself, or pass the

office along to some other candidate. Johnson said he believes Ibsen took the PIO position away from him to keep him from using it to further McDermott's candidacy for the office of sheriff.

**D. Witnesses**

**Patty Baumgart**, HR Director for Missoula County, which includes the sheriff's office and a total of about 700 full-time employees.

Baumgart said Ibsen talked her about changing the employee assigned to the PIO position at the end of March or early April 2013. She said Ibsen mentioned Pavalone. She said she emphasized it was important to follow the union contract in making the appointment.

Baumgart said the notice to Johnson on about April 22, 2013, advising him that he was not to speak to reporters or post information via social media without the permission of the sheriff "really clipped (Johnson's) wings hard," and offered, "I can see why Johnson blanched at that."

Baumgart said personal use of a vehicle to transport family "isn't allowed," and said she has no knowledge that others do that. She said if she had heard of such a practice, she would "take it to the risk manager" due to the potential liability.

Baumgart said the grievance meeting Johnson and others were told they needed to use vacation time to attend was a meeting called by Respondent. She said if union members are "just chit-chatting," that must be done on their own time, but the grievance meeting was something different.

Baumgart said Ibsen approached her to complain that Johnson was using the sheriff's office Facebook page to promote McDermott. She said she believes it was related more to McDermott's position with the union (Deputy's Association.) Ibsen did not mention political activity, she said. She subsequently found that "every officer under the sun was there (sheriff's office Facebook)" and that the effort appeared to be flattering all the officers of the department.

**Bill Burt**, a patrol sergeant; one of four for Respondent. Burt said he has worked twenty years in law enforcement, and eight with Respondent.

Burt said Johnson's appointment to the PIO position came as a surprise in 2011, without any kind of process involved. Burt said he expected a grievance at the time, but none came. Burt said he was surprised again when Johnson was removed from the position; primarily because Johnson and Ibsen had developed such a good working relationship, but also because of the amount of training and the related costs invested in Johnson.

Burt said he became close to Ibsen and a personal relationship developed between them when they both lost loved ones. "My connection is with (Ibsen) Burt said. "Probably still is."

Burt said in November 2012 he became aware Johnson had an interest in running for Sheriff, and he knew McDermott did as well. Those two got together on their plans, Burt said, but the effort wasn't seen as undercutting Ibsen because "we all knew Ibsen was not running again."

Burt said when he heard a rumor Johnson was removed from the PIO position, he called him out of concern. He said he was surprised by Johnson's positive attitude. "I could tell he was upset, but he was trying to take the high road."

On at least two occasions while at work, Burt said, and one at Ibsen's house, Ibsen told Burt he would "do anything within his power to keep that son of a bitch (McDermott) from being elected."

"That was prefaced with, 'This is just between you and I,'" Burt said. "I think it's pertinent. I think it's important. Carl is a man who preaches right and wrong." Burt said Ibsen told him, "Now that I know he's (McDermott) going to run, I don't want to turn this over to him; I'm considering I'll run again."

Burt said Ibsen has enough dislike for McDermott that he'd like to see anyone but him in the position. Burt said he believes Johnson's involvement in the race would solidify McDermott's winning the race.

Burt said Ibsen's letter of April 17, 2013 announcing that someone would be chosen to replace Johnson "was a hard thing for me to read, because I knew the sheriff had already selected (Paige Pavalone) about five weeks earlier. Burt said he'd asked Pavalone about the change previously, in late February or early March, but she declined to talk about it.

**Paige Pavalone**, a patrol division deputy for three years before being assigned the PIO position Johnson held. Prior to that, she said, she was a detention officer.

Pavalone said Ibsen spoke with her about the PIO position in late February or early March, saying he wanted to rotate the position, and thought she would be a good candidate. Pavalone said the position fits her college education in communications and political science. She said the offer from Ibsen came as a surprise, but Ibsen gave her three days to think about it. She said she spoke with her family, and decided it would be a good idea to accept.

Pavalone denied that she told Burt she felt pressure to take the position. She said she does not recall talking to Burt about the position, and objected to questioning in that regard.

Pavalone said she worked alongside Johnson for about a month "on different tasks" as she assumed the new PIO position. She said she does not recall discussing guidelines on posting to social media. "I've never had to run anything by supervisors," she said. She said she recalls initially running ideas by her supervisor, but said it was never required.

## E. Documents

**Respondent presented** an e-mail Johnson sent Ibsen on April 16, 2013 in which Johnson explained he'd "mentioned to someone he was returning to detectives," and asked if Ibsen could "make an announcement to the troops. . . that this wasn't based on anything I did or a poor performance."

Johnson told Ibsen in the e-mail, "You asked me to think about a replacement." Johnson suggested "making it a civilian appointment." Johnson thanked Ibsen "for trusting the position to me and selecting me to get the program off the ground."

Respondent also presented a memo Ibsen sent to all sheriff's office personnel on April 17, 2013, "to quash any rumors." In it, Ibsen commented positively on Johnson's job performance, and said he would be "picking a new PIO sometime in the next week or two."

**Charging Party presented** his performance evaluation, signed by Clark and Ibsen August 21, 2012. It shows an overall score of "above satisfactory," with "outstanding" marked in a "public contacts" section.

The narrative section of the report appears to include only positive comments. Two training conferences were named that Clark wrote he would like Johnson to attend, and Clark described steps he'd taken to ensure Johnson met the prerequisites for the training, including on-line study.

In a summary section, Clark recommended that Johnson be promoted to a higher graded and paid position, and noted that Johnson should contact Clark in October 2012 to complete the required paperwork.

In a goals and training section, the "self-evaluation" section of the report, Johnson wrote that his goals for the coming five years are "to continue and grow the impact of the (PIO) position." He wrote that he had concerns about "missed opportunities of advancement," but said he "intend(s) to stay in the position to be sure what I was part of from the beginning is successful." Johnson described looking forward to certain upcoming training opportunities.

Neither the portion of the review completed by Johnson or the section completed by Clark and signed by Ibsen and Clark appear to make any mention of the PIO assignment being temporary or rotating.

## F. Omissions

This report is limited to witnesses, documents and other evidence relevant to the analysis of the issue presented. Additional documents, witness testimony and witness statements in the file are not included in this report.

### III. Analysis and Conclusion

Charging Party alleges Respondent discriminated against him by demoting him because of his political beliefs (support of an opponent's campaign for Sheriff). In analyzing such a claim, the Bureau first looks to determine if a charging party can establish a prima facie case of discrimination.

To establish a prima facie case of discrimination, he must show:

- 1) he is a member of a protected class;
- 2) he was qualified for the job;
- 3) Respondent took an adverse action against him; and,
- 4) evidence establishes a reasonable inference that Charging Party was replaced by someone outside of his protected class.

Charging Party states he talked openly with others in early 2013 about running with a co-worker, TJ McDermott, for the office of sheriff. Without notice, he was removed from a position he held as a spokesman (PIO) for Respondent. About a week later, the authority he'd been given to perform the job without daily oversight was sharply curtailed. He complained to Respondent's HR Director that he believed he was being targeted for supporting McDermott. Johnson thereby articulates a prima facie case of illegal discrimination based on political beliefs.

In answer to the complaint, Respondent stated that the position Charging Party held was a temporary, revolving position, and when Johnson informed Respondent he intended to spend his own money to attend a training, Respondent was "put in a quandary," and chose to inform him of plans to "transition him out" of the position.

Once Respondent articulates a legitimate, non-discriminatory reason for its action, Charging Party may still prevail by proving, with a preponderance of the evidence, that the reasons offered were not the true reasons for its action; rather, the reasons are a pretext for discrimination. Pretext may be proven by evidence that a discriminatory motive was the reason for the action, or that Respondent's explanations are not credible, and are unworthy of belief.

Charging Party said Respondent said nothing about the assignment being temporary when he was placed in the position in 2011, and only heard it described in those terms when he was told he was being removed, in mid-April 2013. He pointed to his annual performance evaluation, signed in August 2012, which made no mention of a change in the assignment.

A substantial component of the evaluation involved discussion by the employee and supervisor of training and growth over the next five years. Any notion of a temporary assignment was not mentioned. Instead, Johnson was recommended for a grade and pay increase in the position.

Witness testimony shows Ibsen expressed animosity toward Johnson's intended running-mate, and expressed that Ibsen would "do anything in (his) power" to keep the opponent from being elected.

Ibsen appears to have chosen Johnson's successor in early March, though Ibsen said he made his choice in early April. Ibsen wrote to all his staff in mid-April 2013 that he would be "picking a new PIO sometime in the next week or two."

About a week later, Respondent sharply curtailed Charging Party's authority by requiring he seek permission in advance for a substantial portion of his duties, duties that were previously within his own discretion. The newly appointed person in the position said she's come under no such requirement.

I find the preponderance of the evidence establishes that Respondent's answer to the charge was pretext for illegal discrimination, and the change in the PIO position was a demotion that occurred because of Johnson's political beliefs – his support and involvement with a candidate Ibsen opposed.

Charging Party also alleges Respondent retaliated after he complained of discrimination to Respondent's HR Director, and subsequently filed the subject complaint. He must show:

- 1) he opposed or participated in a protected activity;
- 2) Respondent took an adverse action against him subsequent to his participation in the protected activity; and,
- 3) there is a causal connection between the protected activity and the adverse action.

Johnson participated in protected activity when he complained of discrimination based on political belief to HR Director Baumgart on April 23, 2013, and when he filed the subject complaint on June 5, 2013, and a related grievance. Johnson said he and McDermott were told to use their own time – vacation leave – to attend a meeting over the grievance on June 21, 2013. In July, Johnson found a copy of a "Law Enforcement Oath of Honor" taped to his computer screen. He said he is the only full-time employee required to work in a noisy common area called "the pit," and described several additional instances he believes show he is being targeted for retaliation.

I find that while Respondent articulated legitimate, non-discriminatory reasons for most of these actions, Sheriff Ibsen's written assertion that Johnson "should be ashamed of the turmoil" he believes Johnson and McDermott created by engaging in what state law defines as protected activity, in the context of the other evidence presented, provides evidence of pretext in Respondent's answer. The preponderance of the evidence supports Charging Party's claim of retaliation.

### Conclusion

Based on my investigation, I find **reasonable cause** to believe unlawful discrimination occurred, as alleged in Charging Party's complaint.



Dennis Unsworth, Investigator  
Montana Human Rights Bureau



Date