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COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

BRISTOL, SS SUPERIOR COURT
FILED

Superior Court Department
Civil Action No. 1973CV0018

KYLE MELLO,
Plaintiff

DEC 30 2019

vs.

MARC J SANTOS, ESQ.
CLERK/MAGISTRATE

COMPLAINT

GREATER NEW BEDFORD REGIONAL
VOCATIONAL TECHNICAL HIGH SCHOOL,
Defendant.

INTRODUCTION

This is an action by the Plaintiff against the Defendant Greater New Bedford Regional Vocational Technical High School. The counts to this action are for breach of an employment contract, breach of the covenant of good faith and fair dealing, promissory estoppel, due process violations, wrongful termination in violation of public policy, intentional infliction of emotional distress, and negligent infliction of emotional distress for the unlawful termination of Plaintiff.

PARTIES

1. The Plaintiff, Kyle Mello ("Mello") is an individual who resides at 56 Jones Street, New Bedford, Bristol County, Massachusetts.
2. The Defendant, the Greater New Bedford Regional Vocational Technical High School ("GNB Voc-Tech") is a Massachusetts public, high school that serves the Towns of Dartmouth and Fairhaven and the City of New Bedford with a principal place of business of 1121 Ashley Boulevard, New Bedford, Bristol County, Massachusetts.

FACTS

3. GNB Voc-Tech is a regional public, technical high school that serves the towns of Dartmouth and Fairhaven and the City of New Bedford, established and administered

under the provisions of M.G.L. Chapter 74.

4. GNB Voc-Tech has an eight member School Committee that is comprised of four individuals from New Bedford, two individuals from Dartmouth and two individuals from Fairhaven.
5. James O'Brien is the current sitting Superintendent at GNB Voc-Tech. He began this position on November 1, 2015.
6. Mello holds a Bachelor's Degree in Graphic Design from the University of Massachusetts-Dartmouth and a M.G.L. Chapter 74 Vocational Technical Education Teaching License.
7. In 2014, Mello began working for GNB Voc-Tech as a Teaching Assistant, which is a full-time, school year position.
8. Shortly after, at the recommendation and direction of his employer, Mello began the process of becoming a licensed teaching professional, taking all the necessary classes, trainings, and tests to become a licensed vocational teacher.
9. In July of 2016, Mello obtained his Chapter 74 License, which is a Vocational Technical Education Teaching License.
10. In addition to working at GNB Voc-Tech, Mello is also employed by the Bristol County Sheriff's Office as a trained, licensed deputy sheriff and also by the Mansfield Police Department, also as a trained, licensed police officer.
11. Pursuant to the GNB Voc-Tech Employee handbook, Mello is a public, municipal employee.
12. On May 30, 2019, GNB Voc-Tech held its Senior After Prom event.
13. Mello had volunteered at the event regularly in the past. At the event Mello, along with

other volunteers, ran the student photo booth.

14. Also on May 30, 2019, Mello was scheduled to work a detail for the Mansfield Police at the Xfinity Center.
15. After completion of his detail work, Mello was planning on going home to change out of his police uniform and then go volunteer at the After Prom event.
16. Before the After Prom event started and while Mello was driving to his detail work, he was contacted by the After Prom coordinator and asked to get to the After Prom event as soon as possible because there was an issue with the printer at the student photo booth.
17. Then, via text message, Mello contacted GNB Voc-Tech's School Resource Officer ("SRO"), who was the senior most officer in charge of security for the After Prom event, and inquired whether or not he could come by directly following his detail to the After Prom event in his full uniform.
18. The SRO consented to Mello coming in his full uniform and wrote "the more the merrier" in response to Mello's text message.
19. There were 3 SROs at the After Prom event: the GNB Voc-Tech SRO and two New Bedford Public Schools SROs. All 3 SROs were at the event in full uniform, which includes a firearm.
20. Following his detail work, Mello drove directly to the After Prom event and entered the building.
21. Mello intended to go to the After Prom event to fix the photo booth printer, then go home to change out of his uniform and then return to the After Prom event to serve in his role as a volunteer.

22. Upon entering the building Mello spoke with both the GNB Voc-Tech SRO and the Assistant Principal, Wally Williams who was the senior most Administrative staff person in attendance. During these conversations, Mello was in full uniform and his firearm was visible and not concealed in anyway. Neither the GNB Voc-Tech SRO nor Principal Williams objected to Mello being there in his full uniform or carrying a firearm.
23. Following his conversations with the GNB Voc-Tech SRO and Principal Williams, Mello went over to the photo booth to help fix the student photo booth printer issue.
24. After fixing the printer issue, Mello spoke with the two other SROs (who are SROs at the New Bedford Public Schools and also licensed New Bedford police officers) at the event and a few other members of faculty and staff.
25. Mello briefly spoke to a few other staff members. At this time he was about to leave the event to go home and change out of his Mansfield Police uniform. He was approached by a female who asked him "What's Mansfield doing here?" The female then proceeded to inform Mello that she was a retired New Bedford Police Sergeant, was on the School Committee and was upset that he was in the building because he did not have jurisdiction there. Mello explained that he was not at the event as a Mansfield police officer but rather that he was a GNB Voc-Tech employee who was volunteering at the After Prom event. He also explained that in his role as a Mansfield officer, he had just worked a detail at the Xfinity Center and that he had been asked, by the After Prom Coordinator, to come to the After Prom event as soon as possible to fix the student photo booth printer. He further explained that he had received the SRO's prior permission to come in full uniform following his detail work.

26. The School Committee member told Mello to leave the building immediately.
27. Mello left the building, went home, changed into civilian clothes and returned to the After Prom event to finish volunteering, without any further interaction with the School Committee member.
28. Based upon information and belief, the School Committee member spoke to at least one of the New Bedford Public Schools SROs and asked whether or not he has an issue with Mello being there in the Mansfield Police Department uniform. The New Bedford Public Schools SRO informed the School Committee member that he did not have an issue with Mello being there in full uniform because he knows he is an employee at GNB Voc-Tech, is a trained officer, and that the students know and trust him.
29. The School Committee member did not have authority under the GNB Voc-Tech School Committee Policy Manual, including but not limited to Section B(BDD) (“The Committee will leave to the Superintendent all matters of decision and administration that come within his/her scope as executive officer or as professional leader of the school system.”) and (BHC) (“All official communications, policies, and directives of staff interest and concern will be communicated to staff members through the Superintendent-Director . . .”) and/or Massachusetts General Laws, including but not limited to, M.G.L. Chapter 71, § 37, to interfere in the day to day operations of the school and/or issue directives to GNB Voc-Tech employees.
30. Based on the complaint by the School Committee member in attendance, on May 31, 2019, GNB Voc-Tech placed Mello on Administrative Leave, pending an investigation of allegations that he carried a firearm onto school property in violation of the law and/or school policy.

31. Mello did not violate the provisions of M.G.L. c. 269, which allows a sworn law enforcement officer to carry a firearm onto a school campus with the permission of the officer in charge of the school.
32. Mello had the consent, express and/or implied, of both the GNB Voc-Tech SRO and Superintendent O'Brien's agent, Principal Williams, to be on the school campus in full uniform, including his firearm.
33. The GNB Voc-Tech policy on firearms is as following: "... no firearms will be carried on the GNBVT Campus by anyone other than New Bedford, Fairhaven, Dartmouth, or Massachusetts State Police, Representative from the Bristol County Sheriff's Office, or my designee. Additionally any individual who may be a sworn law enforcement officer and who is working on our campus as an employee will NOT be allowed to carry firearms on our campus. . ."
34. On June 26, 2019, at the request of his employer, Mello had a meeting with Principal Robert Watt and Pamela Smith of Human Resources. In the meeting Mello asserted his position that he had not violated any state laws or school policies because he had the consent from all necessary parties to be in full uniform, which includes a firearm, at the event. Mello also asserted his position that, at the After Prom event, he was not working as a GNB Voc-Tech employee, but that instead he was a volunteer.
35. During the meeting Smith suggested to Mello that he should have left his firearm in the glove compartment box of his vehicle. Mello pointed out that such an act would be in violation of Massachusetts law.
36. On July 11, 2019, GNB Voc-Tech sent Mello a letter in which it informed Mello that it found that he had violated GNB Voc-Tech policies and that if he wished he could

appeal the decision to the Superintendent.

37. Mello appealed the decision to Superintendent O'Brien.
38. A hearing with Superintendent O'Brien was scheduled for August 13, 2019. However, on August 9, 2019, GNB Voc-Tech's legal counsel informed Mello's legal counsel that the outcome of the hearing had already been pre-determined: Mello could resign or he would be terminated.
39. Mello's legal counsel pointed out that a hearing with a pre-ordained outcome, before hearing Mello's statement or the evidence, was in violation of the law. GNB Voc-Tech's counsel maintained her client's position. Mello declined to participate in the hearing because it was not going to be an impartial hearing in accordance with the law.
40. On August 20, 2019, GNB Voc-Tech terminated Mello.
41. Prior to the After Prom event, GNB Voc-Tech sent Mello a one-year employment contract for the 2019-2020 school year. The parties agreed to the contract, under which Mello was to be employed for the 2019-2020 school year as a Teaching Assistant and in exchange GNB Voc-Tech would pay Mello a salary and provide him with benefits, including health insurance. Mello had a similar employment contract with GNB Voc-Tech for the 2018-2019 school year.
42. The quality of Mello's work at GNB Voc-Tech was excellent.
43. Mello is married with an infant and a toddler. Mello provided medical benefits for his family through his position at GNB Voc-Tech. Mello is now forced to pay out of pocket costs for medical benefits for his family.
44. Mello has also and continues to suffer from severe emotional distress, mental anguish, loss of professional opportunities, loss of personal and professional reputation, and

other losses.

**COUNT I
BREACH OF CONTRACT**

45. Plaintiff hereby incorporates by reference paragraphs 1 through 44 above.
46. GNB Voc-Tech and Mello bargained for and agreed to the 2018-2019 and 2019-2020 employment contracts.
47. Under the 2018-2019 and 2019-2020 employment contracts, GNB Voc-Tech had and has, pursuant to the contract, a contractual obligation to employ Mello as a Teaching Assistance for the 2018-2019 and 2019-2020 school years, provide to Mello a salary and fringe benefits, including health insurance annually.
48. GNB Voc-Tech's conduct, as set forth above in this Complaint, constitutes a breach of its contractual obligations under its contract with Mello because GNB Voc-Tech refuses to adhere to the employment contracts and on August 20, 2019 terminated Mello.
49. As a direct and proximate result of GNB Voc-Tech's breach, Mello has suffered damages.

WHEREFORE, Plaintiff, Kyle Mello demands judgment in his favor and against Defendant, GNB Voc-Tech, for substantial damages, interest, costs, reasonable attorneys' fees, and for such other and further relief as the Court may deem proper.

**COUNT II
COVENANT OF GOOD FAITH AND FAIR DEALING**

50. Plaintiff hereby incorporates by reference paragraphs 1 through 49 above.
51. Implied as a matter of law within the 2018-2019 and 2019-2020 employment contracts between Mello and GNB Voc-Tech is a covenant of good faith and fair dealing.
52. GNB Voc-Tech breached this covenant by placing Mello on administrative leave in bad

faith, conducting a bad faith investigation of Mello, allowing a School Committee member to inappropriately interfere with the day to day operations of the school, making a determination of the outcome before a fair and impartial hearing was held, failing to hold a fair and impartial hearing, and terminating Mello in violation of the law and not pursuant to required Administrative Law procedures.

53. GNB Voc-Tech's conduct, as set forth above, constitutes a breach of the covenant of good faith and fair dealing implied in the 2018-2019 and 2019-2020 employment contracts as a matter of law.
54. As a direct and proximate result of GNB Voc Tech's breach of the covenant of good faith and fair dealing, Mello has suffered damages.

WHEREFORE, Plaintiff, Kyle Mello demands judgment in his favor and against Defendant, GNB Voc-Tech, for substantial damages, interest, costs, reasonable attorneys' fees, and for such other and further relief as the Court may deem proper.

**COUNT III
PROMISSORY ESTOPPEL**

55. Plaintiff hereby incorporates by reference paragraphs 1 through 54 above.
56. GNB Voc-Tech offered and promised to provide Mello with the position of Teaching Assistant for the 2018-2019 and 2019-2020 school years, a salary and benefits with the intent of inducing Mello into agreeing to an employment contract, remaining employed at GNB Voc-Tech, and requiring him to fulfill all the duties required of him by GNB Voc-Tech as a Teaching Assistant.
57. Mello relied upon such promises and commitments.
58. Mello has fulfilled all the duties of Teaching Assistant.
59. GNB Voc-Tech was aware of the reasonable reliance and acts taken by Mello in

reliance on such promises.

60. As a direct and proximate result of GNB Voc-Tech's offer or promise, Mello suffered damages, including, but not limited to, loss of professional opportunities, loss of personal and professional reputation, and other losses.

WHEREFORE, Plaintiff, Kyle Mello demands judgment in his favor and against Defendant, GNB Voc-Tech, for substantial damages, plus interest, reasonable attorneys' fees and for such other and further relief as the Court may deem proper.

**COUNT IV
DUE PROCESS VIOLATION**

61. Plaintiff hereby incorporates by reference paragraphs 1 through 60 above.
62. The U.S Constitution, Massachusetts Declaration of Rights, Administrative Law procedures and/or GNB Voc-Tech's policies entitle Mello to a fair, impartial investigation of any alleged violations of the law and/or school policies and also entitle Mello to a fair, impartial hearing with the Superintendent when an adverse employment action is taken against him.
63. GNB Voc-Tech acted in an arbitrary and capricious manner, abused its discretion, and otherwise violated the law, when it conducted a biased investigation with a pre-determined outcome.
64. GNB Voc-Tech also acted arbitrarily, capriciously, abused its discretion, and otherwise violated the law, when the outcome of the August 13, 2019 was determined before the hearing was held.
65. GNB Voc-Tech's decisions were made in violation of constitutional provisions, based upon an error of law, made upon unlawful procedure, unsupported by substantial evidence, arbitrary and capricious, an abuse of discretion and/or otherwise not in

accordance with the law.

66. As a direct and proximate result of GNB Voc Tech's unlawful actions, Mello has suffered damages.

WHEREFORE, Plaintiff, Kyle Mello demands judgment in his favor and against Defendant, GNB Voc-Tech, for substantial damages, interest, costs, reasonable attorneys' fees, and for such other and further relief as the Court may deem proper.

**COUNT V
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

67. Plaintiff hereby incorporates by reference paragraphs 1 through 66 above.
68. The U.S Constitution, Massachusetts Declaration of Rights, Administrative Law and/or GNB Voc-Tech's own policies entitle Mello to a fair, impartial investigation of any alleged violations of the law and/or school policies and also to a fair, impartial hearing with the Superintendent.
69. At all relevant times, Mello acted in accordance with the law and GNB Voc-Tech policies regarding carrying firearms onto a school campus.
70. Mello reasonably and in good faith believed his conduct was protected by public policy.
71. GNB Voc-Tech acted in a bad faith manner and in violation of public policy when it terminated Mello without conducting a fair investigation and holding a fair hearing, as he was entitled to, in accordance with the law and/or school policies.
72. GNB Voc-Tech's termination of Mello was in violation of a valid public policy.

WHEREFORE, Plaintiff, Kyle Mello demands judgment in his favor and against Defendant, GNB Voc-Tech, for substantial damages, interest, costs, reasonable attorneys' fees, and for such other and further relief as the Court may deem proper.

COUNT VI
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

73. Plaintiff hereby incorporates by reference paragraphs 1 through 72 above.
74. GNB Voc-Tech intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of its actions.
75. GNB Voc-Tech's conduct was extreme and outrageous.
76. GNB Voc-Tech's actions were the cause of Mello's distress.
77. As a direct and proximate result thereof, Mello suffered and continues to severe emotional distress.

WHEREFORE, Plaintiff, Kyle Mello demands judgment in his favor and against Defendant, GNB Voc-Tech, for substantial damages, interest, costs, reasonable attorneys' fees, and for such other and further relief as the Court may deem proper.

COUNT VII
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

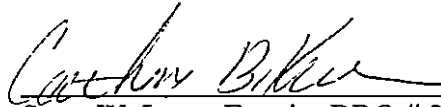
78. Plaintiff hereby incorporates by reference paragraphs 1 through 77 above.
79. GNB Voc-Tech failed to use reasonable care and was otherwise negligent.
80. Mello suffered severe emotional distress, including physical harm.
81. GNB Voc Tech's negligence and failure to use due care caused Mello's emotional distress.
82. It was reasonably foreseeable that GNB Voc-Tech's actions would cause Mello severe emotional distress.
83. A reasonable person would have suffered emotional distress under the circumstances.

WHEREFORE, the Plaintiff demands judgment in his favor and against the Defendant for substantial damages, plus interest, reasonable attorneys' fees and for such other and further relief

as the court may deem proper.

THE PLAINTIFF KYLE MELLO DEMANDS A JURY TRIAL ON ALL COUNTS.

KYLE MELLO
by his Attorneys,



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