UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Laurence Stewart,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

City of Minneapolis,

Defendant,

And
International Union of Operating
Engineers Local 49,

Relief Defendant.

Court File No: 17-cv-226 DSD/TNL

AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND

The Plaintiff and proposed class representative, Laurence Stewart ("Plaintiff" or "Mr. Stewart"), for his Amended Complaint against Defendant City of Minneapolis ("City" or "Defendant"), by and through counsel, states and alleges as follows:

PARTIES, JURISDICTION & VENUE

1. This Complaint seeks to remedy Defendant's failure to accommodate in violation of the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01, *et seq.,* as well as its failure to accommodate in violation of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. §§ 12101, *et seq.*

2. Plaintiff resides in Hennepin County, Minnesota and is a citizen of Minnesota.

3. Defendant is a municipality in Minnesota.

4. At all times relevant hereto, Plaintiff and Defendant were "employee" and "employer," respectively, as those terms are defined by Minn. Stat. § 363A.03 and 42 U.S.C. § 12101.

5. International Union of Operating Engineers Local 49 ("Local 49") is a trade union with members who are employees of the City of Minneapolis. Plaintiff Stewart was a member of Local 49, and some members of the putative class are current or former members of Local 49. Local 49 has a collective bargaining agreement with the City of Minneapolis.

6. Local 49 is a required party under Fed. R. Civ. P. 19, pursuant to this Court's August 21, 2017 Order. Local 49 is names as a Relief Defendant only. Plaintiff and the putative class assert no legal claims against Local 49.

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367. Defendant properly removed this matter to this Court.

FACTUAL BACKGROUND

The City of Minneapolis's Return to Work Policy

8. The City of Minneapolis maintains a "Return to Work Policy" ("the Policy"), which covers most City employees and which governs the City's reintegration of injured employees into the workforce.

9. The Policy has three phases.

10. Once an injured employee is cleared to return to work with restrictions, he enters Phase 1 of the Policy. In Phase 1, the City has thirty (30) days to place the

employee into a temporary or "light duty" work position that the employee can perform, given her or his *temporary* work restrictions or disabling limitations, if any.

11. After thirty (30) days in the "light duty" job, the employee is automatically moved into Phase 2. Here, the City continues to provide the employee with "light duty" work that the employee can perform, given his physical restrictions.

12. Phase 2 of the Policy has no defined temporal limit.

13. If at any point the employee's restrictions become "permanent," as defined by the City, *or* the employee reaches "maximum medical improvement" in the workers' compensation system, then the employee is immediately moved into Phase 3, known as the "Job Bank." This is the final phase of the Policy.

14. The Policy states that "If an employee reaches maximum medical improvement (MMI) and/or has permanent restrictions, and thus cannot return to their pre-injury job (because of inability to perform the essential functions of the pre-injury position), the employee is placed into the Return to Work Job Bank for 120 calendar days."

15. Under the Policy, the City does not assess whether an employee could perform the essential functions of their pre-injury job *with reasonable accommodation*, as required by the MHRA and ADA.

Phase 3: The "Job Bank"

16. During the Job Bank phase of the City's Return to Work Program, employees can apply for open positions within the City. Employees are entitled to receive coaching sessions to assist with their internal job search.

17. Employees who are placed into the Job Bank are not given hiring preferences for open positions; rather, they are simply allowed to apply for open jobs on the same terms and conditions as any other applicant.

18. If, after 120 days in the Job Bank, an employee has not accepted an offer of employment within the City (or a decision on an offer of employment is not pending), his employment with the City is automatically terminated.

19. The Policy does not provide for an interactive process allowing the City to conduct an assessment regarding potential reasonable accommodation(s) for disabled employees.

20. The City does not, in practice, engage in any interactive process regarding potential reasonable accommodations for disabled employees who are placed into the Job Bank. Rather, those employees are automatically terminated after 120 days without consideration for reasonable accommodation.

21. The Policy provides that under no circumstances may an employee remain in the Job Bank for more than 120 days.

22. The Policy does not provide for any individualized assessment regarding a specific employee's need to remain in the Job Bank for longer than 120 days.

23. The Policy specifically prohibits this City from conducting individual assessments or engaging in any interactive process, stating that there shall be "no exception" to its provisions "without the approval of the Oversight Committee."

Allegations Specific to Mr. Stewart

24. Mr. Stewart was hired by the City on May 8, 2000, as a Construction and Maintenance Laborer.

25. He was subsequently hired internally as an Automotive Mechanic on June 5, 2000.

26. On or about October 20, 2009, Mr. Stewart was injured on the job and became disabled. After one year, he was cleared to work, with temporary restrictions, by his physician. Those temporary restrictions prevented Mr. Stewart from resuming his job as a mechanic without reasonable accommodation.

27. Mr. Stewart entered Phase 1 of the Policy on November 22, 2010, where he was temporarily assigned to work as an Office Support Specialist.

28. The City determined that Mr. Stewart could not fulfill the job requirements of an Automotive Mechanic, his previous job, without being given any reasonable accommodation.

29. On January 17, 2011, Mr. Stewart entered Phase 2 of the Policy.

30. On May 6, 2013, the City determined that Mr. Stewart's disability was "permanent," a conclusion that it reached using its own criteria and defining characteristics of what qualified as a permanent disability. Consequently, under the Policy, Mr. Stewart was automatically placed into Phase 3.

31. The City never engaged in any interactive process with Mr. Stewart about how to accommodate his disability by, for example and not by way of limitation: (1) reassigning him to an open position, (2) returning him to his initial job with accommodations that allowed him to perform the essential functions of that position, (3)

allowing him to work on a permanent basis in his position as Office Support Specialist, or (4) dialoguing with him regarding his work abilities and/or restrictions.

32. Mr. Stewart pursued open positions in the City during the Return to Work Job Bank phase, and interviewed for five positions. He did not receive a single job offer for any position, even though he met the minimum qualifications for more than one of the positions he applied to.

33. Mr. Stewart's employment was automatically terminated at the end of his Job Bank period on October 9, 2013, after 120 calendar days in the Job Bank.

Exhaustion of Administrative Remedies

34. Plaintiff has exhausted his administrative remedies.

CLASS ALLEGATIONS

Plaintiff re-alleges each and every paragraph of this Complaint.

35. Mr. Stewart brings this action as a class action under Minn. R. Civ. P. 23.01 and 23.02(b) and 23.02(c) on his behalf and on behalf of all other members of the class described below.

36. Plaintiff seeks certification of the following class:

> All employees of the City of Minneapolis who, from December 2, 2012 to the present, are or were subject to the City of Minneapolis's "Return to Work" policy and who were placed into Phase 3 of the "Return to Work" policy (known as the "Return to Work Job Bank") and whose employment with the City was automatically terminated under the "Return to Work" policy.

37. **Numerosity:** Upon information and belief, members of the class are so numerous that joinder of all members is impracticable. The Policy applies to nearly all

City employees, and has been in effect for several years. Detailed information on the size of the class can be ascertained through records maintained by Defendant.

38. **Commonality:** Questions of law and fact exist as to all members of the class and predominate over any questions affecting solely individual class members. Among the questions of law or fact common to the class are:

- Whether the City's "Return to Work" Policy of automatically terminating a disabled employee at the conclusion of Phase 3 constitutes a failure by the City to engage in the interactive process under the ADA and MHRA?
- Whether, pursuant to the Policy, the City fails to reasonable accommodate those disabled employees who can perform the essential functions of their job with accommodation?
- Whether the City's "Return to Work" Policy violates the ADA and the MHRA on their face?
- Whether the Policy has a disparate impact on disabled persons?

39. **Typicality:** Plaintiff's claims are typical of the claims of the class members, as Mr. Stewart and all class members were subject to the City's Policy by Defendant in which they were terminated from employment at the conclusion of Phase 3 under the Policy without the City having engaged in the interactive process in violation of the ADA and MHRA.

40. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of the members of the class. Mr. Stewart has no interests adverse to class

members and has retained counsel competent and experienced in class action and employment discrimination litigation.

41. **Predominance:** The questions of law or fact common to claims of Plaintiff and the class predominate over any questions of law or fact affecting only individual members of the class. All claims by Plaintiff and the class members are based on the uniform Return to Work policy described in this Complaint. Common issues predominate when, as here, liability can be determined on a class-wide basis.

42. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of Defendant's uniform practice because joinder is impracticable. Furthermore, prosecution of separate actions by individual class members would create an inherent risk of inconsistent and varying adjudications, with the concomitant risk of the establishment of incompatible and conflicting standards of conduct for Defendant. In addition, due to the vastly unequal power between the parties, a class action may be the only way, as a practical matter, that class members' claims will be adjudicated. Plaintiff foresees no significant difficulties in managing this action as a class action.

43. Defendant has acted and continues to act on grounds generally applicable to the class, thereby making declaratory and permanent injunctive relief appropriate with respect to current and future disabled employees of Defendant. Specifically, Defendant should be prohibited from automatically terminating disabled employees without first engaging in an interactive process to determine whether reasonable accommodations can be made for those disabled employees.

CAUSES OF ACTION

COUNT I:
FAILURE TO ACCOMMODATE
IN VIOLATION OF THE MINNESOTA HUMAN RIGHTS ACT
Against Defendant City of Minneapolis

Plaintiff re-alleges each and every paragraph of this Complaint.

44. The City engaged in an unlawful employment policy and practice involving Plaintiff and the class by refusing to accommodate their disabilities, in violation of the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01, *et seq.*

45. The City's Return to Work Policy violates the MHRA on its face. Specifically, its mandatory provisions to (1) automatically terminate an employee after 120 days, (2) prohibit any engagement in an interactive process, and (3) refusal to assess whether an employee can perform the essential functions of their job with accommodation, all violate the MHRA's requirement to provide reasonable accommodation. Minn. Stat. § 363A.08.

46. The Return to Work Policy forecloses the possibility of granting certain accommodations, such as "making facilities readily accessible to and usable by disabled persons . . . job restructuring, modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis," in violation of Minn. Stat. § 363A.08.

47. The City violates the MHRA because it failed to make reasonable accommodations to Plaintiff and the class by, for example, failing to engage in any interactive process to assess possible reasonable accommodations, failing to provide any

reasonable accommodations, and automatically terminating employees after 120 days without any inquiry or assessment of accommodating an employee's disability.

48. In violation of the MHRA, Minn. Stat. §§ 363A.01, *et seq.*, Defendant terminated Plaintiff and the class because of their disabilities.

49. Plaintiff and class members were disabled when Defendant decided to terminate them.

50. Defendant subjected Plaintiff and the class to differential treatment because they are or were disabled and, in fact, did not even attempt to discuss the possibility of reasonable accommodations for Plaintiff and the class.

51. Defendant's actions were intentional and were performed with malice and/or reckless indifference to the MHRA.

52. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and the class have suffered damages, including lost wages and employment benefits.

COUNT II:
FAILURE TO ACCOMMODATE
IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
Against Defendant City of Minneapolis

Plaintiff re-alleges each and every paragraph of this Complaint.

53. The City engaged in an unlawful employment policy and practice involving Plaintiff and the class by refusing to accommodate their disabilities, in violation of the Americans with Disabilities Act, as amended, 42 U.S.C. §§ 12101, *et seq*.

54. Plaintiff and the class were disabled when Defendant decided to terminate them.

55. Defendant's decision to terminate Plaintiff and the class was motivated by their disabled status.

56. Defendant subjected Plaintiff and the class to differential treatment because of their disabilities.

57. The Return to Work Policy is facially deficient in terms of what the ADA requires. Its automatic and mandatory provisions for moving permanently disabled persons to the Job Bank and terminating them after 120 days, if they are unable to find new employment, violate the ADA's requirement that employers engage in an interactive process.

58. Defendant's actions were intentional, pursuant to its Return to Work Policy, and were performed with malice and/or reckless indifference to the ADA.

59. The City engaged in unlawful employment practices with respect to Plaintiff and the class by refusing to accommodate their disabilities, in violation of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. §§ 12101, *et seq.*

60. As a direct and proximate result of Defendant's illegal conduct, Plaintiff and the class have suffered damages, including lost wages and employment benefits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, respectfully requests relief from this Court as follows:

a. Certification of this case as a class action on behalf of the proposed class and designation of Plaintiff as class representative and undersigned counsel as class counsel;

b. Judgment against Defendant in favor of Plaintiff and the class finding Defendant to be in violation of the MHRA and ADA and, therefore, liable to Plaintiff and the class for damages in an amount to be determined at trial; restitution in the form of back pay with interest; reinstatement; front pay, in addition to the monetary value of any employment benefits to which they would have been entitled as employees of Defendant; punitive damages pursuant to the MHRA and ADA; and treble damages pursuant to the MHRA;

c. Judgment against Defendant in favor of Plaintiff and the class awarding prejudgment interest;

d. Judgment against Defendant in favor of Plaintiff and the class awarding costs incurred in this action, together with reasonable attorneys' fees under both state and federal laws;

e. Judgment against Defendant declaring that its conduct violated the MHRA and ADA, awarding injunctive relief permanently enjoining Defendant from continuing its Return to Work Policy and/or directing Defendant to amend its Policy to be in compliance with state and federal laws; and

f. Such other and further relief, including equitable relief, as the Court deems just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS.

Dated: August 31, 2017

TESKE, MICKO, KATZ, KITZER & ROCHEL, PLLP

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