IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS LAPINSKI, Plaintiff, v. THE BOARD OF EDUCATION OF THE BRANDYWINE SCHOOL DISTRICT, JOSEPH DEJOHN, DONALD FANTINE, JR.,RALPH ACKERMAN, PAUL HART, ROBERT BLEW, NANCY DOOREY, G. LAWRENCE PELKEY, JR., G. HAROLD THOMPSON, RAYMOND TOMASETTI, JR. Defendants.	)	Civil Action No. 00-173-KAJ

MEMORANDUM OPINION

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Wilmington, Delaware
January 29, 2004

JORDAN, District Judge

I. INTRODUCTION

Plaintiff Thomas Lapinski filed a complaint alleging a variety of federal and state claims against the Board of Education (the "Board") of the Brandywine School District (the "District"), the individual members of the Board, Joseph P. DeJohn ("DeJohn"), who was the Superintendent of the District, and Donald Fantine, Jr. ("Fantine"), who was the interim Assistant Superintendent of the District (collectively, the "Defendants"). (Docket item ["D.I."] 1.) Presently before me is Defendants' Motion for Judgment on the Pleadings (the "Motion"). (D.I. 10.) For the reasons that follow, the Defendant's Motion will be granted.

II. BACKGROUND

Plaintiff was the Principal of Mount Pleasant High School ("MPHS"), located in the defendant District, from July 1, 1991 to April 1, 2000. (D.I. 13 at 2.) On December 14, 1999, the District sent plaintiff a letter informing him that the Board had voted "not to renew [his] contract or extend [his] employment as an administrator beyond June 30, 2000," the expiration date of his employment contract. (D.I. 15, Appx. at C1.*)* Plaintiff retired shortly before his employment contract expired, and, in May 2000, successfully ran in an election for a seat on the Board. (D.I. 11 at 4.) He was sworn in as a member of the Board on July 11, 2000. (*Id.*)

Plaintiff alleges that, during his time as the Principal of MPHS, Defendants engaged in certain retaliatory actions against him due to "whistle blowing" letters he wrote and statements that he made to DeJohn and other District administrators.[1] (*See*

[1]Specifically, Plaintiff brings the following seven claims against Defendants: (1) First Amendment retaliation under 42 U.S.C. § 1983, (2) deprivation of a Due Process

D.I. 1.)

1. The Board's "Special Evaluation" of Plaintiff and Subsequent Decision to Renew Plaintiff's Employment Contract For One Year

Beginning in the mid-1990s, the Plaintiff began a series of less-than-harmonious interactions with District officials and the Board. In July 1995, Plaintiff determined that MPHS was understaffed for custodians, based upon the State of Delaware's formula for calculating the number of custodians according to a school building's square footage and site acreage. (D.I. 1 at ¶ 35.) He brought this to the attention of District and State officials in February 1996, and, on August 7, 1996, wrote a letter to DeJohn regarding the situation. (*Id.*) The response the Plaintiff received was that the State formula determines only whether a building qualifies for a certain number of custodians but that the actual assignment of custodial staff to each school facility is within the District's discretion. (D.I. 6 at ¶ 41.)

In July 1996, the Board dissolved a salary schedule that allegedly provided for step increases in administrators' salaries based on seniority. (D.I. 1 at ¶¶ 26, 27). Plaintiff questioned DeJohn and a member of the Board regarding the elimination of the salary schedule, and wrote a letter of formal protest to DeJohn. (D.I. 1 at ¶¶ 29-31.) Plaintiff also unsuccessfully sued the District on his claim that its decision to dissolve

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liberty interest under 42 U.S.C. § 1983, (3) retaliation against witness in civil rights claims, (4) breach of implied covenant of good faith and fair dealing, (5) intentional interference with a contractual relationship, (6) violation of 29 Del. C. § 5115(c) in the non-renewal of Plaintiff's contract due to his reporting of suspected State law violations, and (7) wrongful discharge.

the salary schedule was improper.[2]

Plaintiff alleges that, due to these incidents, he was subjected to a "special evaluation" by the District in November 1996, one year earlier than he was scheduled to be evaluated. (D.I. 1 ¶ 42.) Plaintiff sent a letter to Fantine and DeJohn questioning the propriety of undertaking the evaluation. (*Id.* at ¶ 43.) They informed him that the District's guidelines permit special evaluations as needed. (D.I. 11 at 9.) Plaintiff alleges that he was criticized during his evaluation (D.I. 1, ¶¶ 47, 48) and, in December 1996, when District administrators' contracts were extended by either one or two years (*id.* ¶ 49), his employment contract was renewed for only one year. He alleges that his shorter renewed contract was in retaliation for his letters questioning the allocation of custodians at MPHS and the propriety of the District's special evaluation.[3] (*Id.* at 124.)

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[2]The Delaware Superior Court dismissed the claim on summary judgment, *see Lapinski v. Board of Education*, No. 98C-07-125 (Del. Supr. Sept. 15, 2000), and the Delaware Supreme court affirmed without oral argument. (D.I.15 at 5.)

[3]In October 1995, Plaintiff learned that MPHS was the only school out of three in the District that deposited proceeds from athletic games into a State account, according to District policy. (D.I. 1 at ¶ 19.) The other two schools retained the proceeds to support their individual athletic programs. (*Id.* ¶ 22.) Plaintiff met with DeJohn on December 15, 1995 to discuss this issue. (*Id.* ¶ 16, 19.) Subsequently, the District requested that the other two schools comply with the District policy instead of retaining the proceeds from athletic games. (*Id.* ¶ 22.) Plaintiff alleges that his meeting with DeJohn on this subject was also a reason his employment contract was renewed for only one year, instead of two. This allegation is unsupported by the facts, as the Board apparently acted to renew Plaintiff's employment contract for one year at its December 11, 1995 meeting, and Plaintiff did not meet with DeJohn until one week later. (D.I. 6 at ¶ 20, Ex. C.)

2. The Board's December 1999 Decision Not to Renew Plaintiff's Employment Contract

In January 1997, Plaintiff discovered that MPHS qualified for $83,560.00 in vocational education funds, but that it was only allocated $4,800.00. (D.I. 1 ¶ 56.) On September 26, 1997, he wrote a letter to the Supervisor of Technology Education for the District, and copied DeJohn, wherein he requested that the Supervisor remit the balance of the unpaid funds to MPHS. (*Id.* ¶ 60.) Plaintiff alleges that DeJohn called a meeting a few days later regarding his letter and criticized the manner in which Plaintiff brought the situation to the Board's and the District's attention. (*Id.* at ¶ 61.) Defendants' position is that the funding discrepancy is due to the fact that the District has discretion in how it allocates the vocational education funds to each school within the District. (D.I. 11 at 19.) Plaintiff alleges that this incident was a motivating factor for Defendants' decision not to renew his employment contract in December 1999.

In a January 21, 1998 letter to DeJohn and various administrators, Plaintiff described two incidents the he thought violated regulations of the Delaware Secondary School Athletic Association. (D.I. 1 ¶ 79.) Under those regulations, schools may not recruit students for athletic pursuits. (D.I. 11 at 11.) Plaintiff claimed that there were two instances where, under Delaware's school choice program, students selected Brandywine High School instead of MPHS. (D.I. 1 at ¶ 79.) Plaintiff requested that the District review the choice program, implying that the students' choice may have been a result of illegal recruiting practices. (*Id.*) According to Plaintiff, DeJohn and Fantine were upset about the letter. (*Id.* ¶¶ 80 and 81.) After an investigation, Defendants determined that Plaintiff's allegations were without merit. (D.I. 6 at ¶ 80.) Again,

Plaintiff alleges that this incident was a motivating factor in Defendants' decision not to renew his employment contract in December 1999.[4]

III. STANDARD OF REVIEW

When considering a motion for judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c), the court must "accept the allegations in the complaint as true, and draw all reasonable factual inferences in favor of the Plaintiff." *Turbe v. Gov't of the Virgin Islands*, 938 F.2d 427, 428 (3d Cir. 1991). The motion can be granted only if no relief could be afforded under any set of facts that could be provided. *Id.; see also Southmark Prime Plus, L.P. v. Falzone*, 776 F.Supp 888, 891 (D. Del. 1991) (citation omitted); *see also Cardio-Medical Associates, Ltd. v. Crozer-Chester Medical Ctr.,* 536 F.Supp.1065, 1072 (E.D. Pa. 1982) ("If a complaint contains even the most basic of allegation that, when read with great liberality, could justify Plaintiff's claim for relief, motions for judgment on the pleadings should be denied."). However, the court need not adopt conclusory allegations or statements of law. *In re General Motors Class E Stock Buyout Sec. Litig.,* 694 F. Supp. 1119, 1125 (D. Del. 1988).

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[4]Plaintiff describes three additional factors he contends motivated Defendants' decision not to renew his employment contract in December 1999. These include (1) information he shared with a private citizen concerning a member of the Board who pled guilty to a count of felony theft (D.I. 1 ¶ 17); (2) information he shared with the District's food services director concerning an assistant Principal's inappropriate use of Burnett Elementary School's kitchen (*id*. ¶ 18); and (3) that he was named as a witness in a charge of discrimination against the District, filed by an applicant who was not hired as a special education teacher (*id.* ¶ 76). However, Plaintiff does not allege that any of the named Defendants were aware of his involvement in any of these incidents.

IV. DISCUSSION

Central to the disposition of this case is the undisputed fact that Plaintiff voluntarily resigned as the Principal of MPHS once he was notified that Defendants did not intend to renew his employment contract before it expired on June 30, 2000. In general, an employee's decision to resign or retire, even in the face of pending termination by his employer, is presumptively voluntary.[5] *See Seigert v. Gilley*, 500 U.S. 226, 228, 234 (1991); *Leheny v. City of Pittsburgh*, 183 F.3d 220, 227 (3d Cir. 1998). Therefore, unless Plaintiff can prove that he was constructively discharged, his claims against defendant must fail. *See Gray v. York Newspapers, Inc.*, 957 F.2d 1070, 1079 (3d Cir. 1992) (when Plaintiff voluntarily resigns, she can only prevail under a constructive termination theory).

In the Third Circuit, courts use an objective test to determine whether an employee has been constructively discharged. *Goss v. Exxon Office Sys. Co.*, 747 F.2d 885, 888 (3d Cir. 1984); *Schafer v. Board of Public Education*, 903 F.2d 243, 249 (3d Cir. 1990). To prove constructive discharge, a Plaintiff must show that the conduct complained of would have the foreseeable result of creating working conditions that would be so unpleasant or difficult that a reasonable person in the employee's position would resign. *Id.*

The pertinent case law demonstrates that high levels of harassment or other

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[5] There are only two circumstances where a resignation is deemed involuntary: (1) when the employer forces the resignation or retirement by coercion or duress, or (2) when the employer obtains the resignation or retirement by deceiving or misrepresentation a material fact to the employee. *Leheny,* 183 F.3d at 228; *Hargray v. City of Hallandale*, 57 F.3d 1560, 1568 (11th Cir.1995). In this case, Plaintiff has not alleged any coercion, duress, or material misrepresentation by the Defendants.

offensive conduct are necessary to find constructive discharge. For example, in *Goss*, *supra*, 747 F.2d at 888-89, prior to her resignation, a female sales representative was subjected to verbal abuse, reassignment, pay cuts, and finally, an ultimatum to accept a new assignment or resign. In *Levendos v. Stern Entertainment, Inc.,* 860 F.2d 1227, 1228 (3d Cir. 1988), the only female management employee was, prior to her resignation, excluded from meetings, denied powers authorized to similar-positioned male employees, and falsely accused of stealing and drinking on the job. In both of these cases, the Third Circuit concluded that a constructive discharge had taken place.

In light of the required objective test, it is clear that Plaintiff has not set forth sufficient facts to prove that Defendants created a working environment so "unpleasant or difficult that a reasonable person in his position would resign." *Schafer*, 903 F.2d at 243; *see also Gray,* 957 F.2d 1070, 1083 (more than a subjective belief is required to establish a constructive discharge). There is nothing in the record indicating that Defendants' reactions to Plaintiff's conversations and letters were so objectively offensive as to compel Plaintiff's resignation.

The record reflects that Plaintiff voluntarily decided to run for a position on the Board. Under State law, he was required to resign as Principal of MPHS before he could become a member of the Board. *See* 8 Del. C. § 1051 (prohibiting an individual from being a member of the board of a school district if he or she is employed by the district). Put simply, Plaintiff cannot voluntarily resign under circumstances such as this and then recover damages from his former employer for retaliation or wrongful termination.

V. CONCLUSION

Because Plaintiff has not set forth any facts to support his claims of retaliation or wrongful discharge, and because, on the record before me, there is no basis for asserting that he was constructively discharged, Defendants' Motion for Judgment on the Pleadings (D.I. 10) will be granted. An appropriate order will issue.

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ORDER

In accordance with the Memorandum Opinion issued on this date, it is hereby ORDERED that Defendants' Motion for Judgment on the Pleadings (D.I. 10) is GRANTED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
January 29, 2004