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OCTOBER 11, 2018
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Aaron L. Cockfield, Petitioner and Appellant, vs. City of Fargo, Respondent and Appellee,	Supreme Court No. 20180336 District Court No. 09-2018-CV-00386

APPELLANT'S BRIEF

APPEAL FROM THE JULY 24, 2018, ORDER ON SUMMARY JUDGMENT AND THE JUDGMENT OF AUGUST 14, 2018

CASS COUNTY DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT
HONORABLE STEVEN E. MCCULLOUGH

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[¶6] 3. The District Court abused its discretion in holding that the totality of the actions of the City of Fargo in terminating Cockfield's employment satisfied his 14th Amendment right to due process.

[¶7] STATEMENT OF THE CASE

[¶8] By a Second Amended Petition for Writ of Mandamus dated March 1, 2018, Petitioner Aaron L. Cockfield (hereafter "Cockfield") commenced an action against his employer, the Respondent City of Fargo (hereafter "City") alleging that the City had violated his 14th Amendment right to due process by terminating his employment without providing an explanation of the employer's evidence and giving him a meaningful opportunity to respond. Cockfield requested that he be reinstated as an employee of the City and awarded back pay and benefits dating back to August 23, 2017, the date of his termination. (App.4)

[¶9] In Respondent's Answer to Second Amended Petition for Writ of Mandamus, the City alleged that Cockfield had been provided with all due process regarding termination of his employment as required by law, both pre-termination

and post-termination, and asked that he be denied any of the relief he had requested. (App. 18)

[¶10] On April 11, 2018, Cockfield filed a Motion for Summary Judgment. (Docket Id. # 42). On May 2, Cockfield filed a Memorandum in Support of Motion for Summary Judgment. (Docket Id. # 49). On that same date, the parties filed their Stipulated Facts. (App. 36-53)

[¶11] The parties filed a Supplemental Stipulation of Fact on May 23, 2018 (App. 54-62) and the next day, May 24, 2018, the City filed Defendant's Brief in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment. (Docket Id. # 59)

[¶12] Judge Steven E. McCullough of the Cass County District Court heard oral argument on the motions for summary judgment on June 18, 2018.

[¶13] The district court entered its Order on Summary Judgment on July 24, 2018, by which it granted the City's motion for summary judgment and denied Cockfield's motion for summary judgment. (App. 63)

[¶14] An Order for Judgment was filed on August 10, 2018. (App.70) The Judgment was filed on August 14, 2018. (App. 72)

[¶15] On September 10, 2018, Cockfield's Notice of Appeal was filed with this Court. (App. 74)

[¶16] STATEMENT OF FACTS

[¶17] On July 28, 2017, Cockfield had been a full-time employee of the City of Fargo Solid Waste Department for more than eight years. (App. 36)

[¶18] On that date, Cockfield was asked by his acting supervisor, Shawn Eckre, to dump a load of hazardous waste. Cockfield refused to perform the requested task because he felt two co-workers, Bob Gregor and Tanner Carges, had unfairly shirked their duty to dump the load when previously asked to do so. (App. 36, 43)

[¶19] Sometime later, Eckre entered the Sanitation Department break room where Cockfield was seated at a computer. Eckre wanted to talk to Cockfield about his refusal to perform the assignment he was given. (App. 36)

[¶20] As Eckre advanced toward Cockfield, Cockfield stood up and pushed Eckre away from him. Eckre stumbled backward and fell against a wall. (App. 36)

[¶21] Cockfield provided his version of the incident in an e-mail to the Route Supervisor, David Rheault, on July 28, 2017. (App. 43)

[¶22] Thereafter, an investigation was conducted by Terry Ludlum, Director of Solid Waste Operations. Ludlum had conversations with numerous department employees, and prior to August 22, 2017, he obtained written statements from Eckre, Mark Steffens and Bob Gregor. A written statement from a fourth department employee, Patrick English, was obtained on August 23, 2017. (App. 37)

[¶23] On August 22, 2017, Cockfield was asked to meet with Ludlum, Rheault, and Human Resources Director Jill Minette. The conversation at the

meeting was recorded by Cockfield and a transcript is included as Exhibit 4 to the Stipulated Facts. (App. 37, 46-53)

[¶24] At this meeting, Ludlum told Cockfield that based on Cockfield's refusal to obey a work directive from Eckre, and based on Cockfield having "escalated the situation into a physical altercation that we're deeming an assault," Ludlum had decided to "move forward with separation." (App. 46-47)

[¶25] At the conclusion of the meeting, Ludlum provided Cockfield with a letter of termination dated August 22, 2017. The letter had been prepared prior to the meeting. (App. 39)

[¶26] In the course of the meeting, Cockfield told Ludlum what he had explained in his e-mail to Rheault on the day of the incident, i.e. that he had refused the work directive because he felt two other employees, Bob Gregor and Tanner Carges, were "trying to pass the buck." (App. 46)

[¶27] Cockfield also told Ludlum that he did not escalate the incident into a physical altercation but that he stood up from his seated position as Eckre advanced toward him. In the e-mail of July 28, 2017, Cockfield said Eckre was walking "rapidly towards me…his body language seemed threatening, nose flaring and charging." He went on to state in the e-mail that "I pushed him away to avoid his spittle on my face." (App. 43, 49)

[¶28] In the meeting on August 22, 2017, Ludlum told Cockfield "…we visited with other people in the room" and "That's not what we're hearing from other parties." However, other than Mark Steffes, Ludlum did not disclose what

"other people in the room" and what "other parties" had been consulted. (App. 48-49)

[¶29] Ludlum did not disclose what the other parties had told him about the encounter between Cockfield and Eckre. Ludlum did not disclose the fact that he had obtained written statements from Eckre, Steffes, and Gregor, nor did he disclose the content of those statements or provide Cockfield with copies. Ludlum did not disclose the fact that he had prepared a diagram of the Sanitation Department break room nor did he show Cockfield that diagram. (App. 37-38)

[¶30] Obviously, Ludlum could not have given Cockfield a copy of the statement of Patrick English because he did not obtain that statement until the following day, August 23, 2017.

[¶31] Cockfield appealed his termination to the Fargo Civil Service Commission. At a hearing held on September 19, 2017, it rejected his appeal by a 3-2 vote. (App. 39-40)

[¶32] Cockfield then appealed to the Fargo City Commission. At a hearing held on October 30, 2017, all three commissioners in attendance voted to reject Cockfield's appeal. (App. 40)

[¶33] Both the Civil Service Commission and City Commission hearings were conducted pursuant to the Fargo Civil Service Disciplinary Action appeal hearing procedures, Policy 300-008A. (App. 44-45). That policy does not allow for cross-examination of witnesses, nor does it allow for issuance of subpoenas compelling an individual's testimony at an appeal hearing. (App. 39-40)

[¶34] The statements of Eckre, Steffes, Gregor and English, and the diagram of the Sanitation break room prepared by Terry Ludlum, were all entered into evidence for the City of Fargo at the Civil Service Commission hearing and at the City Commission hearing. Neither Cockfield not his attorney received these materials until September 12, 2017. (App. 39-40)

[¶ 35] **ARGUMENT**

[¶ 36] **I. Standard of Review**

[¶ 37] In *Fargo Education Association v. Paulsen*, 239 N.W.2d 842 (N.D. 1976), this Court stated as follows:

> This court will not overturn the trial court's denial of a writ of mandamus unless there is a finding that the court has abused its discretion.

239 N.W.2d at 849.

[¶ 38] The standard was further clarified in *Nagel v. City of Bismarck*, 673 N.W.2d 267 (N.D. 2004):

> Absent an abuse of discretion, this Court will not overturn a trial court's denial of a petition for a writ of mandamus. *Smith v. Burleigh County Bd. of Comm'rs,* 1998 ND 105, ¶ 9, 578 N.W.2d 533. A trial court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner. *Opdahl v. Zeeland Pub. Sch. Dist. No. 4,* 512 N.W.2d 444, 446 (N.D.1994).

673 N.W.2d at 270.

[¶39] **II. The District Court abused its discretion in holding that Cockfield was provided with adequate pre-termination due process in connection with the termination of his employment by the City of Fargo**

[¶40] A. An Individual with a Constitutionally Property Interest In His Employment Is Entitled to Pre-Termination Due Process Which Includes an Explanation of the Employer's Evidence

[¶ 41] In the landmark case of *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), the U.S. Supreme Court addressed the right of an individual with a constitutionally protected property interest in his employment to pre-termination due process under the Fourteenth Amendment:

> An essential principle of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950). We have described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest."[7] *Boddie v. Connecticut,* 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971) (emphasis in original); see *Bell v. Burson,* 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90 (1971). This principle requires "some kind of a hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment. *Board of Regents v. Roth,* 408 U.S., at 569–570, 92 S.Ct., at 2705; *Perry v. Sindermann,* 408 U.S. 593, 599, 92 S.Ct. 2694, 2698, 33 L.Ed.2d 570 (1972). As we pointed out last Term, this rule has been settled for some time now. [citations omitted]

470 U.S. at 542.

[¶42] The Supreme Court went on to define what it meant by "some kind of [pre-termination] hearing:"

> The foregoing considerations indicate that the pre-termination "hearing," though necessary, need not be elaborate. We have pointed out that "[t]he formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." *Boddie v. Connecticut,* 401 U.S., at 378, 91 S.Ct., at 786. See *Cafeteria Workers v. McElroy,* 367 U.S. 886, 894–895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961). In general, "something less" than a full evidentiary hearing is sufficient prior to adverse administrative action. *Mathews v. Eldridge,* 424 U.S., at 343, 96 S.Ct., at 907. Under state law, respondents were later entitled to a full administrative hearing and judicial review. The only question is what steps were required before the termination took effect.
>
> * * *
>
> The essential requirements of due process, and all that respondents seek or the Court of Appeals required, are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement. See Friendly, "Some Kind of Hearing," 123 U.Pa.L.Rev. 1267, 1281 (1975). The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. See *Arnett v. Kennedy,* 416 U.S., at 170–171, 94 S.Ct., at 1652–1653 (opinion of POWELL, J.); *id.,* at 195–196, 94 S.Ct., at 1664–1665 (opinion of WHITE, J.); see also *Goss v. Lopez,* 419 U.S., at 581, 95 S.Ct., at 740. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee.

470 U.S. at 545-546 (emphasis supplied)

[¶43] As a regular, full-time employee of the City of Fargo, Cockfield enjoyed the protections of the civil service system. Fargo City Ordinances, Article

7-0102. He could only be discharged for cause, and he then had the right of appeal to the Civil Service Commission and the City Commission. Fargo City Ordinances, Article 7-0305(D). Thus, Cockfield had a constitutionally protected property interest in his employment. *See, Sullivan v. Valley City Park District,* 1997 WL 33135312, (D. N.D., 1997).

[¶44] The U.S. Court of Appeals for the Eighth Circuit has followed the mandates of *Loudermill* in multiple decisions. See, for example, *Raymond v. Board of Regents of the University of Minnesota*, 847 F.3d 585 (8th Cir., 2017):

> The essential requirements of due process ... are notice and an opportunity to respond." *Loudermill*, 470 U.S. at 546, 105 S.Ct. 1487. "To satisfy minimal due-process requirements at the pre-termination stage, a public employer must give the public employee oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." *Smutka v. City of Hutchinson*, 451 F.3d 522, 526–27 (8th Cir. 2006) (internal quotations omitted). "To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee." *Id.*

847 F.3d at 590.

[¶45] Similarly, see this excerpt from *Christiansen v. West Branch Community School District*, 674 F.3d 927 (8th Cir. 2012):

> As stated above, pre-termination process need not be elaborate to satisfy due process. Indeed, even an informal meeting with supervisors is sufficient where the employee is given notice of the charges, an explanation of the employer's evidence, and an opportunity to respond.

674 F.3d at 936.

[¶46] In *Tolson v. Sheridan School District*, 703 F.Supp.766 (E.D. Ark. 1988), the court stated:

> At a minimum, to support the termination of a governmental employee who possesses a property interest, the employer must provide to the employee (a) clear and actual notice of the reasons for termination in sufficient detail to enable the employee to present evidence relating to those reasons; (b) notice of both the names of those who have made allegations and the specific nature and factual basis for the charges; (c) a reasonable time and opportunity to present testimony in his or her defense; and (d) a hearing before an impartial board of tribunal. *Agarwal v. Regents of University of Minnesota,* 788 F.2d 504, 508 (8th Cir.1986).

703 Supp. at 772 (emphasis supplied).

[¶47] Cockfield was not given the names of the city employees who had made allegations against him in their statements provided to Ludlum, nor was he given the specific nature and factual basis for their charges.

[¶48] There are at least two Eighth Circuit cases on this issue which were appealed from the U.S. District Court for the District of North Dakota. In *Simons v. City of Grand Forks*, 985 F.2d 981 (8th Cir. 1993), the court held that Robert Simons, the City Assessor in Grand Forks, had not been denied pre-termination due process. It did so based on the fact that Simons had been provided a letter listing 11 specific allegations under investigation and the fact that before Simons' termination Grand Forks Mayor Mike Polovitz had provided Simons and his attorney with copies of all relevant evidence and access to the original evidence compiled in the mayor's investigation.

[¶49] In contrast, Cockfield was provided with zero documentary evidence in advance of his termination and virtually no oral explanation of the relevant evidence.

[¶50] In *Flath v. Garrison Public School District No. 51*, 82 F.3d 244 (8th Cir. 1996), a claim that pre-termination due process had been denied was also rejected, but it was noted that "Flath received notice of the contemplated non-renewal and an explanation of the charges against her."

[¶51] This Court has also adhered to the *Loudermill* case in its decisions on pre-termination due process. In *Rudnick v. City of Jamestown*, 463 N.W.2d 632 (N.D. 1990), the Court considered the case of a police officer in Jamestown who was demoted from sergeant to corporal. It rejected Rudnick's claim that he had been deprived of pre-termination due process. The pre-termination process afforded to Rudnick stands in sharp contrast to what Cockfield received:

> Rudnick was given written notice of the charges against him before he was demoted. Detective Wolff conducted an investigation of Rudnick's alleged misconduct and submitted a written report. Rudnick received a copy of Wolff's report and filed a written response with Chief Jensen on June 11, 1987. Rudnick was then given a pre-demotion hearing before the Discipline Review Board on June 17, 1987. Evidence was presented to support the allegations against Rudnick, and he appeared before the Board to explain his conduct. The Board found that the allegations against Rudnick had been established and recommended that he be demoted from sergeant to corporal with a corresponding pay reduction. Rudnick was further notified by letter dated June 25, 1987, that Chief Jensen and Mayor James Lusk concurred in the Board's findings and

> recommendation; that the demotion was effective July 1, 1987; and that he could appeal to the Jamestown Civil Service Commission. Rudnick thereafter appealed to the Civil Service Commission and received a post-demotion hearing on July 22, 1987. We believe the pre-demotion procedures and subsequent hearing before the Civil Service Commission accorded Rudnick greater protections than the due process requirements of *Loudermill.* We are not persuaded that he was constitutionally entitled to any greater due process protections.

463 N.W. 2d at 639 (emphasis added).

[¶52] In his Second Amended Petition for Writ of Mandamus, Cockfield maintains that had Ludlum informed him on August 22, 2017, of the contents of the Patrick English statement – assuming Ludlum was aware of its contents before it was submitted by English on August 23, 2017 – he would have told Ludlum that shortly after the incident on July 28, 2017, English had admitted to Cockfield that he was in a position in the hallway leading to the break room, behind Eckre, and did not see what occurred in respect to the altercation. (App. 6)

[¶53] Had Ludlum shown Cockfield the written statements of Eckre, Steffens and Gregor, Cockfield would have indicated his disagreement with portions of those statements and the basis for his disagreement. (App. 6)

[¶54] Had Ludlum shown Cockfield the break room diagram prepared by Ludlum, Cockfield would have pointed out numerous errors in that diagram in terms of how it depicted the location of the "push" that Cockfield gave Eckre. (App. 6)

[¶55] In its decision, the district court repeatedly states that Cockfield received "an explanation of the evidence," though it concedes that "the City could have been more diligent in providing information to Cockfield." (App. 67, 69).

[¶56] The contention that Cockfield received an "explanation of the evidence" is a clear misstatement of the record and is both unreasonable and unconscionable, and thus an abuse of discretion. Cockfield did not receive the statements or even a summary of the statements of Eckre, Gregor, Steffens and English. He was not told who was interviewed by the City. He was not shown Ludlum's diagram of the Sanitation Department break room, which Cockfield later pointed out was inaccurate. This was all important "evidence" relied on by the City in deciding on termination, and none of it was explained to Cockfield.

[¶57] **III. The District Court abused its discretion in holding that Cockfield was provided with adequate post-termination due process in connection with the termination of his employment by the City of Fargo**

[¶58] In *Loudermill, supra*, the U.S. Supreme Court, quoting from a prior case, stated "…'[t]he formality and procedural requisites for the [pre-termination] hearing can vary, depending upon the importance of the interests involved and the nature of subsequent proceedings." (emphasis added) Similarly, in *Young v. City of St. Charles*, 244 F.3d 623 (8th Cir. 2001), the Eighth Circuit stated:

"The pre-termination process need not be elaborate, especially if there are meaningful post-deprivation procedures." 244 F.3d at 627.

[¶59] Whether Cockfield has been denied due process can only be determined by looking at both the pre-termination and post-termination procedures.

[¶60] As the court noted in *Tolson v. Sheridan School District*, supra, citing *Loudermill*:

> ...the total lack of pre-termination procedure in the instant case is especially grievous because the post-termination procedures were also inadequate under the due process clause. In such a case, the pre-termination procedures must be more in-depth and meaningful than would otherwise be required.
>
> Regardless of whether pre-termination proceedings are adequate, the equivalent of a full evidentiary hearing is necessary either pre or post-termination in order to meet the demands of due process

703 F.Supp at 772 (emphasis added)

[¶61] In Cockfield's case, there was a clear deficiency in the "explanation of the employer's evidence," as required by *Loudermill*. Not only was Cockfield not given copies of the statements obtained by Ludlum and in Ludlum's possession on August 22, 2017. Cockfield wasn't told what was in the statements or even which employees had provided statements. Under those circumstances, after he and his attorney were provided with the statements of Eckre, Steffens, Gregor and English on September 12, 2017, prior to the Civil Service Commission hearing, Cockfield had a strong interest in being able to subpoena Steffens to appear before the Civil Service Commission. Steffens was the only independent witness to the altercation between Cockfield and Eckre, and he arguably gave inconsistent statements to Ludlum and Cockfield (App. 48, 59, 62) Cockfield also needed to be able to cross-examine Eckre, Gregor and English. But the procedures for appeal hearings before

the Civil Service Commission and City Commission prohibited Cockfield from issuing subpoenas or cross-examining witnesses.

[¶62] In *King v. University of Minnesota,* 774 F.2d 224 (8th Cir. 1985), *Riggins v. Board of Regents of University of Nebraska*, 790 F.2d 707 (8th Cir. 1986) and the case of *Agarwal v. Regents of the University of Minnesota*, 788 F.2d 504 (8th Cir. 1986), the Eighth Circuit spelled out the minimum requirements for procedural due process:

> 1) clear and actual notice of the reasons for termination in sufficient detail to enable him or her to present evidence relating to them;
> 2) notice of both the names of those who have made allegations against the teacher and the specific nature and factual basis for the charges;
> 3) a reasonable time and opportunity to present testimony in his or her own defense; and
> 4) a hearing before an impartial board or tribunal.

788 F.2d at 588 (emphasis added).

[¶63] Cockfield can legitimately argue that the City satisfied only one of these four requirements in the course of his termination and subsequent appeal, i.e. that he had a hearing before an impartial board or tribunal.

[¶64] Did Cockfield have clear and actual notice of the reasons for termination in sufficient detail to enable him or her to present evidence relating to them? He did not, because a) at the pre-termination meeting on August 22, 2017, he wasn't given the names of the city employees interviewed by Ludlum or what they had said in their statements, and b) when he did know who had been interviewed

and what they had said, he could not subpoena them or cross-examine them before the Civil Service Commission or the City Commission.

[¶65] Was Cockfield given notice of the names of the city employees who had made allegations against him and the factual basis for their charges? Absolutely not, until after he had already been terminated on August 22, 2017.

[¶66] Was Cockfield given a reasonable opportunity to present testimony in his own defense? He was allowed to give his own version of the altercation to both Ludlum on August 22, 2017, and to the Civil Service Commission and the City Commission, but he was not allowed to subpoena Mark Steffens to elaborate on Steffens' video-recorded statement of August 27, 2017, wherein Steffens stated "You were sitting in your chair. You got up and you pushed [Eckre] with both hands on his chest." (App. 62)) This is in marked contrast to Eckre's statement that "He stood up from the computer turned to me and walked a few steps toward me." And Eckre went on to state "...then he took a step toward me and pushed me with both his arms into the wall." (App. 57, emphasis added)

[¶67] If Cockfield merely stood up from his chair to protect himself from a rapidly advancing Eckre, and never took a single step toward Eckre, then that lends credence to his position that there was no assault or workplace violence in this matter but merely one employee protecting himself from the menacing actions of another employee. But Cockfield was not allowed to make that argument to Ludlum because he didn't have the statements of Eckre and Steffens that Ludlum had in his possession on August 22, 2017, and he couldn't make it to the Civil Service

Commission or the City Commission because he had no ability to subpoena Steffens or cross-examine Eckre,

[¶68] **IV. The District Court abused its discretion in holding that the totality of the actions of the City of Fargo in terminating Cockfield's employment satisfied his 14th Amendment right to due process**

[¶69] As noted above, the decisions of the U.S. Supreme Court, the U.S. Court of Appeals for the Eighth Circuit, the U.S. District Court for the District of Eastern Arkansas, and this Court, all hold that certain fundamental due process protections must be provided to the employee facing termination, whether in the pre-termination phase or the post-termination phase.

[¶70] As stated in *Tolson v. Sheridan School District*, supra:

> Regardless of whether pre-termination proceedings are adequate, the equivalent of a full evidentiary hearing is necessary either pre or post-termination in order to meet the demands of due process.

703 F.Supp at 772.

[¶71] In theory, this Court could view the pre-termination procedures followed by the City, in isolation, as adequate – though Cockfield strenuously argues they were not adequate. Similarly, it could view the post-termination process before the Civil Service Commission and City Commission, in isolation, as adequate.

[¶72] But looked at in their totality, the procedures followed by the City in connection with the termination of Cockfield's employment did not satisfy procedural due process because:

1) Cockfield was not given the names of his accusers (i.e., the names of the witnesses relied upon by Ludlum and the City) until after he was terminated;
2) Cockfield was not given the statements of those witnesses (until after he was terminated);
3) Cockfield was not informed as to the contents of those statements (until after he was terminated);
4) Cockfield was not allowed to subpoena witnesses in his own defense (after his termination);
5) Cockfield was not allowed to cross-examine the City's witnesses (after his termination)

[¶73] Cockfield was therefore deprived of a significant property right – his employment – without due process of law.

[¶74] CONCLUSION

[¶75] For all the reasons cited herein, Petitioner Cockfield respectfully submits that he was deprived of his Fourteenth Amendment right to due process in connection with the termination of his employment by the City of Fargo.

[¶76] Cockfield respectfully requests that he be reinstated as an employee of the City of Fargo, with back pay, to August 23, 2017, unless and until such time as he is terminated in a manner in accord with his procedural and constitutional rights.

Dated this 11th day of October, 2018.

/s/ Leo F.J. Wilking
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[¶77] CERTIFICATE OF COMPLIANCE

[¶78] The undersigned hereby certifies that said brief complies with N.D.R.App.P. 32 in that the brief was prepared with Times New Roman, size 13-point font, proportional typeface and that the total number of words does not exceed 8,000 from the portion of the brief entitled "Statement of Issues" through the signature block. The word count was calculated using "Microsoft Word" word processing software, which also counts abbreviations as words.

[¶79] Dated: October 11, 2018.

/s/ Leo F.J. Wilking
Leo F.J. Wilking (ND # 03629)

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Aaron L. Cockfield, Petitioner and Appellant, vs. City of Fargo, Respondent and Appellee.	Supreme Court No. 20180336 District Court No. 09-2018-CV-00386 **CERTIFICATE OF SERVICE**

[¶1] I, Marlene Schumacher, hereby states that she is of legal age and that on October 11, 2018, she following documents were served on all individual Parties:

- **Appellant's Brief; and**
- **Appellant's Appendix.**

[¶2] Service was completed by sending true and correct copies to the following address(es):

Howard Swanson - hswanson@swlawltd.com

[¶3] To the best of affiant's knowledge, information and belief, such address as given above was the actual address of the party intended to be so served.

[¶4] I declare under penalty of perjury that everything I have stated in this document is true and correct.

_/s/Marlene Schumacher_____
Marlene Schumacher