IN THE OHIO SUPREME COURT

State of Ohio ex rel. STEVE R. MADDOX, *et al.*	:	
Relators,	:	
	:	CASE NO. 14-1267
v.	:	
THE VILLAGE OF LINCOLN HEIGHTS, OHIO, *et al.*	:	
Respondents.	:	

AFFIDAVIT OF STEPHANIE SUMMEROW DUMAS

STATE OF OHIO :
: SS:
COUNTY OF HAMILTON :

I, Stephanie Summerow Dumas, being first duly cautioned and sworn, state as follows:

1. I am over the age of 18, am competent to make this sworn statement, and have personal knowledge of all matters contained and all documents referenced in this Affidavit.

2. I am currently employed as the Village Manager for the Village of Lincoln Heights, Ohio ("the Village"). I have held this position since 2011. I am the Chief Administrative Officer. I am also responsible for executing the Village Ordinances, which are attached to this Affidavit as Exhibit A. Among my other responsibilities, I am responsible for: administering the employee classification plan; preparing and submitting the annual budget to the Village Council; executing all contracts relating to the business affairs of the Village; dismissing, suspending, and disciplining officers and employees; and preparing an annual report concerning the state of the Village's affairs.

3. When I started as Village Manager, I became acquainted with how the Village Ordinances, policies, and procedures were interpreted, how the Village Ordinances, policies, and procedures were applied, how the employee classification plan was interpreted, and how the employee classification plan and benefits were applied.

4. The Village is located in Hamilton County, Ohio and has an economically disadvantaged history. It was founded in the 1920s by property developers as a suburban enclave for African-American homeowners working in nearby industries. It was incorporated as a Village in 1946. According to the 2010 census, the medium

household income in the Village was $23,000, the medium per capita income was $14,928, and 35.4% of residents lived in poverty. Also, according to the 2010 census, the Village had a population of 3,286. Of that population, the racial makeup was: 1.7% White; 95.5% African American; 0.3% Native American; 0.2% Pacific Islander; 0.3% other races; and 2.0% of two or more races.

5. The Village has a small, decreasing tax base. This is due to the high percentage of retirees, senior citizens, and unemployed persons. Although many local governments were hit hard during the Great Recession in 2009 and 2010, the harm suffered by the Village was disproportionately worse. Revenues steeply declined and numerous properties were condemned. From 2007 to 2012, housing values plummeted about 40%. The Village also has major outstanding financial obligations. Through the first half of 2016 the Village will be repaying a $1,200,000 tax refund owed to Hamilton County under a multi-year payment plan for a school district retroactively deemed exempt from real estate taxes.

6. In 2012, due to some of the circumstances listed above, the Village's financial condition was such that it was the worst case that the Village had ever experienced, there was no longer a surplus of funds to help in emergency conditions, and there were no rainy day resources available.

7. In Fall 2014, the Village's insurance carrier revoked insurance coverage for police and fire services. After a string of emergency meetings, and while surrounding communities provided temporary relief, the Village's fire service insurance resumed under a general liability insurance policy covering everything except police services. The Village, which sixteen insurers deemed unable to meet underwriting guidelines to even issue a quote for insurance coverage, was unable to resume insurance coverage for police services. The Village officially disbanded the Police Department on October 14, 2014.

8. Faced with a financial crisis, major outstanding monetary obligations, a plummeting tax base, insurance issues, and various other legal problems, the Village has explored all available options including the possibility of Chapter 9 bankruptcy.

9. Relators Steve Maddox, Antwan Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Roger Reynolds, Henry Dawkins, and Moniqua White (collectively "Relators") formerly worked at the Village as independent contractors, temporary employees, and/or part-time police officers.

10. Under Village Ordinance 37.02, I am responsible for administering the employee classification plan. Additionally, under Village Ordinance 37.17, I am responsible for interpreting the application of the Village's employee benefit plan regarding issues not specifically covered by Ordinance Chapter 37. Further, Village Ordinance 37.04 states that employee classifications for purposes of employee benefits are intended to be "descriptive and not restrictive."

Page 23 of the Employee Handbook, which is attached as Exhibit B, states that "benefits eligibility is dependent upon a variety of factors, including employee classification." Also, Page 17 states that the intent of the Employee Handbook is "to clarify the definitions of employment classifications so that employees understand their employment status and benefit eligibility." Further, Page 17 states that *regular full-time* employees are "generally" eligible for the Village's employee benefit package, but that *part-time* employees are ineligible for benefits except for "legally mandated benefits (such as Social Security and workers' compensation insurance)."

According to Page 30 of the Employee Handbook, the only employees eligible to participate in the Village's health insurance plan are regular full-time employees.

These provisions reflect the legislative intent behind the Village's employee benefit program—that certain benefits were not available to independent contractors, temporary employees, or part-time employees, unless specifically agreed otherwise.

11. Historically, and before I began at the Village, the Village has made its own independent, determinations as to how workers are classified and as to what classifications of workers are entitled to certain employee benefits—including the sick leave, holiday pay, fringe benefits, and Ohio Public Employees Retirement System (OPERS) benefits at issue in this case—pursuant to its own standards, policies, practices, discretionary decisions, and unique knowledge about certain positions and the Village. These determinations are not dependent, and have not been dependent, on separate designations or classifications made by other persons, entities, or governmental agencies.

12. Relators did not receive certain employee benefits while they worked at the Village as independent contractors, temporary employees, or part-time employees, such as fringe benefits, paid sick leave, holiday pay, or OPERS benefits.

13. Relators signed agreements prior to working as independent contractors, temporary employees, and/or part-time employees expressly relinquishing any right to certain employee benefits, such as the sick leave, holiday pay, fringe benefits, and OPERS benefits at issue in this case. These agreements, which are attached as Exhibit C, specifically exclude their entitlement to employee benefits. These contracts were generally re-executed every 90 days, upon other specified time periods, or upon a continued, mutual understanding that the same relationship would continue unless the worker's classification was changed pursuant to the Village Ordinances. To the extent that these relationships continued after the expiration date, the same terms of employment—including pay and benefits structure—and employment classification continued. If these contractual arrangements had transitioned into a different employment classification upon expiration, such as into a part-time or full-time classification, Relators were aware that their terms of employment would have changed and that their pay would have increased, which did not occur.

14. The Village's policies, practices, and own independent determinations as to how workers are classified, and as to what classifications of workers are entitled to certain employee benefits, was consistent with the practical function of the Village Police Department. Before the Police Department was disbanded, it effectively served as a local training ground for young officers, had a very high turnover rate, and was a place where officers gain valuable practical experience before moving elsewhere.

15. During the time that Relators worked as independent contractors, temporary employees, or part-time employees at the Village, they:

    a. Were hired by different supervisors, all of whom had their own individualized policies and practices;

    b. Worked under different supervisors, all of whom had their own individualized policies and practices;

    c. Signed materially different independent contractor, temporary employee, and/or part-time police officer agreements;

    d. Performed different duties and had different responsibilities. For instance, unlike the other Relators: Sparks simultaneously performed police clerk duties and general officer duties; Smith simultaneously performed code enforcer duties; Dawkins simultaneously performed K-9 duties; and Reynolds and Dawkins worked in both the police and fire departments;

    e. Were paid different hourly rates;

    f. Were scheduled different amounts of hours; and

    g. Worked different shifts.

16. According to the Village's finance record retention schedule, which was signed and approved by Hamilton County of Ohio, the Ohio Historical Society, and the Ohio Auditor of State, and is attached as Exhibit D, the Village only maintains certain records, such as employee time sheets, payroll sheets, and payroll journals, for three years. The Village does not possess or maintain time sheets, payroll sheets, or payroll journals prior to 2010. The Village does maintain personnel records and OPERS records on a permanent basis, and keeps various other categories of records for longer periods of time.

17. From the time Relators began working for the Village, they accepted and cashed regular and final paychecks without reservation. Those paychecks did not reflect any deductions, allocations, or availability related to the employee benefits at issue in this case. During this time, Relators had full access to the Village Ordinances (Exhibit A), Employee Handbook (Exhibit B), and Police Policy and Procedures Manual (Exhibit H) that set forth the structure, nature, and scope of the Village's employee benefit

program, including the benefits and classifications at issue in this case.[1] Despite this, prior to the filing of this case I was not aware of Relators or any independent contractors, temporary employees, or part-time employees objecting, complaining, or contesting any alleged rights to the employee benefits at issue in this case.

18. Pursuant to Ordinance 37.13(D), the Village's policies, practices, and own independent employee classifications, and the employment agreements signed by Relators, sick leave benefits are only available to full-time employees. Sick leave benefits are not available to independent contractors, temporary employees, or part-time employees. The Village's sick leave accrual history reports for full-time employees are attached as Exhibit E.

19. The Police Officer Call Logs sometimes specified whether police officers missed time for sickness or medical reasons. Similar records or logs were not maintained for those outside the Police Department.

20. According to Village Ordinance 33.03(B), "[a] police officer who is a regular employee and works more than 30 hours per week averaged over a 52 week period shall receive hospitalization, medical and dental insurance coverage, disability and death benefits, and any other benefits in amounts established by the Village Manager in accordance with the limitations set forth in the annual budget approved by Council." Additionally, Village Ordinance 37.21 states that "[e]ach employee who works more than 30 hours per week averaged over a 52 week period shall receive hospitalization, medical and dental insurance coverage, disability and death benefits, and any other benefits in amounts established by the Village Manager in accordance with the limitations set forth in the annual budget approved by Council." These Ordinances were enacted on February 10, 1997.

21. Exhibit F contains the details of these fringe benefits offered through the Village's employee benefit program, including health insurance, disability insurance, life insurance, and vision insurance.

22. Ordinance 33.03(B) is identical to 37.21 except that Village Ordinance 37.21 does not limit benefits to "regular employees." Nonetheless, since the inception of Village Ordinance 37.21 in 1997—and pursuant to the Village's policies, practices, own independent employee classifications, the agreements signed by Relators, and consistent with the Village's treatment of sick leave, holiday pay, and OPERS benefits—fringe benefits were only provided to full-time employees. In other words, the Village only considered full-time employees as "employees" for purposes of fringe benefits.

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[1] Additionally, the Village Ordinances are available on the American Legal Publishing website at:
http://www.amlegal.com/nxt/gateway.dll/Ohio/lincolnheights_oh/villageoflincolnheightsohiocodeofordinan?f=templates$fn=default.htm$3.0$vid=amlegal:lincolnheights_oh.

23. Village Ordinance 37.01 defines "regular employee," for purposes of Ordinance 33.03(B), as employees who have been permanently appointed to a full-time or part-time position by the Village Manager. It also sets forth specific definitions for full-time, part-time, and temporary employees. Before 2012, the Village did not have part-time police officers. In 2012, following the Internal Revenue Services' determination that Relator Maddox was an employee for Federal Income Tax purposes only, and not an independent contractor, Maddox was re-classified as a part-time police officer and the Village simultaneously amended Ordinances 33.02, 33.03, and 37.21 to further clarify that only full-time employees and police officers are entitled to fringe benefits. These amended Ordinances, which are attached to this Affidavit as Exhibit I, more precisely reflect what has been the Village's practice and policy since 1997—that only full-time employees and police officers are entitled to fringe benefits.

24. Because the Village does not possess or maintain time sheets, payroll sheets, or payroll journals prior to 2010, those who worked more than 30 hours per week averaged over a 52-week period cannot be determined.

25. Village Ordinance 37.15 provides that "[e]ffective January 1, 1976, all village employees shall . . . be granted a paid leave of absence'" for specified holidays.

26. Since the inception of Village Ordinance 37.15—and pursuant to the Village's policies, practices, own independent employee classifications, and the agreements signed by Relators—holiday pay benefits are only provided to full-time regular employees.

27. Because the Village does not possess or maintain time sheets, payroll sheets, or payroll journals prior to 2010, the Village does not have any record of whether Relators worked on holidays, whether they received holiday pay, how many hours they worked, or how much holiday pay they received. It would be extremely unlikely, particularly for a period of multiple years, for a police officer or other worker to have worked every holiday covered by Ordinance 37.15 in a given year. During my employment at the Village, I don't recall a single officer or other worker that ever did this.

28. As shown in Exhibit G, on September 8, 2014 and September 22, 2014, counsel for Respondents submitted correspondence to the Employer Outreach Division of OPERS in response to various "Notice of Right and Request for Determination of OPERS Membership" forms received by Respondents' counsel for Relators Antwan Sparks, Henry Dawkins, Aaron Smith, Michael Lowe, Onam Williams, Monique White, and Roger Reynolds. Since these forms were submitted several months ago, OPERS has not made any determination that Relators were members of OPERS or that they were entitled to OPERS benefits.

29. True and accurate copies of Exhibits A–I are attached to this Affidavit. I have personal knowledge of these Exhibits, they consist of records made and kept in the

course of regularly conducted business of the Village of Lincoln Heights, Ohio, and they are routinely made and kept in the course of the Village's business.

Further, affiant sayeth naught.

Stephanie Summerow Dumas

Sworn to before me and subscribed in my presence this 10th day of March, 2015.

Notary Public

Ayrica Raglin
Notary Public, State of Ohio
My Commission Expires 09-23-2018