

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

City of Long Lake,

Plaintiff,

vs.

City of Orono,

Defendant.

Court File No.: 27-CV-23-9758

ORDER FOR CONTEMPT

The above-entitled matter came on for a hearing at the Hennepin County Government Center before the Honorable Laurie J. Miller on February 1, 2024, on Plaintiff City of Long Lake's motion for a finding of constructive civil contempt against Defendant City of Orono based on the City Of Orono's alleged violation of the Court's July 14, 2023 Order for Temporary Injunction.

Attorneys Christopher Yetka and Sarah Greening appeared on behalf of Plaintiff City of Long Lake ("Long Lake").

Attorneys Paul Reuvers and Ashley Ramstad appeared on behalf of Defendant City of Orono ("Orono").

At the February 1, 2024 hearing, the Court heard testimony from the following witnesses:

Long Lake Mayor Charlie Miner

Long Lake Fire Chief Mike Heiland

Texas Fire Chiefs Association Director of Professional Development Ken Prillaman

Architect and Principal for Oertel Architects, Ltd, Thomas Stromsodt

Orono City Administrator and City Engineer Adam Edwards

Orono Fire Chief James Van Eyll

Firefighter Ben Veach

Firefighter James Seals

Firefighter Justin Hinker

The parties further stipulated that firefighters Ben Carlson and Patrick Cotton would provide testimony consistent with that of the other firefighters who testified. Mr. Carlson and Mr. Cotton were present to testify in person, but by the time they would have been called it was late in the day, and the parties stipulated to the substance of their testimony to allow the hearing to conclude at a reasonable hour.

At the beginning of the hearing, Plaintiff's Exhibits 1 through 24, 26, and 27 were received into evidence by stipulation. Plaintiff's Exhibit 25 was received by stipulation as a court exhibit only. Defendant's Exhibits 100 through 122 were also received into evidence by stipulation. Plaintiff's Exhibits 28 and 29 were received without objection during the course of the hearing.

At the close of the evidence, the Court left the record open for the parties to submit written closing arguments. Both parties timely filed their written closing arguments on February 5, 2024, and the Court took the matter under advisement at that time. Thereafter, following a telephone conference with the Court on March 7, 2024, the parties made brief additional written submissions on March 13, 2024 and March 18, 2024. The Court gave its permission for the parties to submit informal letters to the Court, regarding an additional factual development that Orono claimed was relevant. Orono made its submission first, and

then Long Lake was given time to respond. The Court did not expressly reopen the factual record, but both parties' informal letters were accompanied by additional affidavits and exhibits. The Court has reviewed all of the materials submitted by the parties and considered them to the extent it deemed them relevant to its conclusions herein.

Having reviewed the testimony of the witnesses, the hearing exhibits, the arguments of counsel, the post-hearing submissions, and all files, records, and proceedings herein, and being fully informed in the premises, the Court makes the following:

FINDINGS OF FACT

1. On June 23, 2023, Long Lake commenced this action, requesting temporary injunctive relief to prevent Orono from violating the contract governing the provision of fire services in Long Lake and Orono ("Contract for Fire Protection" or "FP Contract"), from soliciting Long Lake firefighters to work for Orono, and from using Fire Station 1 and 2 or hindering Long Lake's use of them. The Court heard Long Lake's injunction motion on June 30, 2023, and two weeks later, under Rule 65.02 of the Minnesota Rules of Civil Procedure, the Court granted Long Lake's motion for temporary injunctive relief ("the Temporary Injunction").

2. The Temporary Injunction, issued on July 14, 2023, prevented and enjoined Orono from, among other things, "recruiting Long Lake firefighters to begin working for the Orono Fire Department, seeking a transfer of Long Lake firefighters' pension funds, or otherwise interfering with the work of the Long Lake firefighters before the end of this litigation." (Temporary Injunction at p. 2, ¶ 3). The Court also enjoined Orono from violating or interfering with the FP Contract and, more specifically, "from using, or

hindering the City of Long Lake’s use of, Fire Station 1 and Fire Station 2 before the end of this litigation, except to the extent the City of Long Lake agrees to such use.” (*Id.* at ¶ 4.)

3. On October 13, 2023, Long Lake moved to hold Orono in contempt of the Temporary Injunction, claiming that Orono had violated the Temporary Injunction by recruiting Long Lake firefighters and by planning a structure to be built on the Fire Station 2 property without consulting Long Lake, and that Orono had thereby hindered the Long Lake Fire Department (“LLFD”).

4. The Court held an initial hearing on Long Lake’s contempt motion on November 8, 2023. On November 21, 2023, the Court issued its Order for Contempt (“First Contempt Order”), finding the City of Orono to be in constructive civil contempt due to violations of the Temporary Injunction. The Court found that the City of Orono had failed to abide by the Court’s order barring Orono from recruiting Long Lake firefighters and the Court’s prohibition on Orono’s use of Fire Station 2 without agreement by Long Lake. The Court ordered that Orono must pay a fine of “\$2,000 for each instance of any future contact for the purpose of recruitment in violation of the [Temporary Injunction],” or for “any instance of future unilateral planning by Orono with respect to either Fire Station 1 or Fire Station 2, without involving Long Lake in the planning process.” (First Contempt Order at pp. 23-24, ¶ 3.) The Court declined to make any findings on the issue of whether Orono’s actions had materially hindered the LLFD, leaving that for a future hearing to be scheduled by the parties. (*Id.* at ¶¶ 6-7.).

5. The Court hereby incorporates by reference the Findings of Fact in the First Contempt Order.

6. In the First Contempt Order, the Court stated that, because Orono's plans for Fire Station 2 had not yet been produced, and because Long Lake did not provide any specific evidence of whether or how the LLFD's operations had been hindered since the issuance of the Temporary Injunction, the record on the hindrance issue was underdeveloped:

[T]he Court has no record upon which to make a ruling on the existence of a hindrance at this time. The Court also lacks evidence from which it could determine the likelihood that the LLFD will be hindered in the future by Orono's construction plans or the hiring of Long Lake firefighters. A further evidentiary hearing will be necessary to develop a record on the hindrance issues.

(First Contempt Order at 19.) Accordingly, the Court directed the parties to appear for a hearing on the following issues:

(1) Whether Orono's construction plans are likely to hinder the LLFD within the meaning of the Court's Order; (2) Whether the hiring of Long Lake firefighters to begin work for the Orono Fire Department has hindered or will hinder the Long Lake Fire Department within the meaning of the Court's Order.

(*Id.* at 24.) At a phone conference on December 7, 2023, the Court also permitted Long Lake to present at the hearing any other evidence it had of further alleged violations of the Court's Temporary Injunction or First Contempt Order.

7. An evidentiary hearing was held on February 1, 2024, and the matter was taken under advisement after written closing arguments were filed on February 5, 2024, as supplemented by additional submissions filed on March 13, 2024 and March 18, 2024.

A. Evidence on Orono's Recruitment of Firefighters

9. The LLFD employs a full-time fire chief and 42 paid-on-call firefighters.

10. The LLFD's paid-on-call firefighters commit to being on-call 24 hours a day but they are not required to respond to every emergency call. In the event of an emergency,

an alert is sent to all firefighters' phones through a software application. This alert contains information on the nature of the emergency, the location, and the number and location of additional emergency personnel who are on route. Individual firefighters weigh this information in determining whether to respond. Responding firefighters are paid an hourly rate measured from the time they arrive at the fire station until the end of the call. While paid-on-call firefighters are not required to respond to all emergency alerts, their response rate must equal or exceed a minimum standard mandated by the department. At the LLFD, the minimum required response rate for its paid-on-call firefighters is 30%. In addition to this required response percentage, LLFD firefighters are also required to attend at least 50% of departmental training sessions.

11. Long Lake Fire Chief Mike Heiland credibly testified that, while the minimum mandated response rate is 30%, the LLFD depends upon individual firefighters responding at far higher rates than 30%. In his view, the LLFD would not be able to operate safely at its current staffing levels if all its firefighters responded to calls only 30% of the time. Chief Heiland credibly testified that it is not feasible for the LLFD to significantly increase its staffing levels. Long Lake has had difficulties in the past trying to increase its roster of paid-on-call firefighters, and those difficulties have been exacerbated by the new and ongoing competition from Orono. Chief Heiland noted that Orono itself has shown no ability to recruit paid-on-call firefighters who are not already working for the LLFD, further evidencing the challenges in fully staffing two competing fire departments with paid-on-call firefighters in the Long Lake/Orono vicinity.

12. Chief Heiland believes that firefighters who serve at more than one fire department are likely, over time, to reduce their response rate at any particular fire

department. Among other things, meeting the training and service requirements for two departments will likely be more onerous for individual firefighters than meeting the requirements at just one department. When asked if Long Lake and Orono could collaborate on staffing and training, Chief Heiland replied that the deep rift that has developed between the two cities would make that impossible. As for training, he pointed out that the Orono Fire Department is not a recognized fire department yet, and he does not know when it will be recognized. To his knowledge, it has no equipment and has yet to conduct any training.

13. To date, ten LLFD firefighters have been hired by Orono as paid-on-call firefighters to work for the Orono Fire Department when it begins operations. Until now, all ten have remained in service with the LLFD. In addition to these ten joint LLFD/Orono firefighters, the LLFD presently has three other firefighters who serve a second department other than the LLFD, meaning 13 out of 42 paid-on-call LLFD firefighters currently are wearing two hats.

14. Thus far, the joint LLFD/Orono firefighters have not yet received any Orono calls, as Orono's obligation to serve the Navarre area of Orono does not begin until July 1, 2024. When these joint firefighters begin responding to calls for more than one department and become responsible to attend trainings at more than one department, Chief Heiland credibly testified that he anticipates the average number of firefighters responding to each LLFD call will decline. He expects the LLFD will struggle if more than 25% of its firefighters serve an additional fire department, because the LLFD needs a predictable number of firefighters to respond to each of its calls in order to get its rigs out the door. It is his considered opinion that having more than 25% of them with dual call responsibilities

will materially hinder the LLFD's ability to respond to emergencies. Chief Heiland noted that the thirteen LLFD firefighters serving more than one department already make up more than 25% of the 42 firefighters serving the LLFD.

15. Chief Heiland has observed harmful effects from Orono's efforts to set up a separate fire department and its competition to employ many of the same firefighters as the LLFD. This competition has set up a divide within the LLFD and lowered morale. He tries to keep the adversity between the two cities from percolating to the surface by focusing on public safety, but he said he ends up spending more of his time and attention on Orono-related issues than on the LLFD. He likened the issues between the LLFD and Orono to politics and religion in terms of their divisiveness.

16. As an example of the harm brought to the LLFD by Orono's efforts, Chief Heiland cited the loss of Assistant Fire Chief Shane Gardner, one of the LLFD's top responders. He had been Assistant Chief at the LLFD for 14 years and his response rate was in the range of 60%. When Orono began to take steps to set up a competing fire department, Assistant Chief Gardner found the ensuing conflict so off-putting that at the end of 2023 he left the LLFD to work for the Mound Fire Department instead, because he was not interested in working for Orono. Chief Heiland described Shane Gardner as an irreplaceable loss for the LLFD, because of his commitment to the department, his many years of experience, and his exemplary leadership within the department.

17. Finally, Chief Heiland expressed concern about the logistics of housing two separate fire station facilities immediately next to one another on a relatively small roadway. While Orono produced plans to construct its own driveway through which its fire trucks would exit and enter its new proposed facility adjacent to Fire Station 2, Chief Heiland

noted that the risk of an accident on the roadway would be heightened in situations where each city's fire station was responding to separate emergencies at the same time. Chief Heiland observed that overlapping emergency calls are not uncommon, as shown by the LLFD's receipt of overlapping calls sixteen times in 2023.

18. Long Lake Mayor Charlie Miner anticipates that Orono's hiring of LLFD firefighters will significantly hinder the LLFD and impact public safety in the second half of 2024, when the Orono Fire Department begins to operate actively. Long Lake is attempting to augment its department with additional firefighters in order to ameliorate this concern, but it is struggling to add new recruits. Mayor Miner noted that while Long Lake pays its firefighters \$15.65 per hour for their on-call work as of January 1, 2024, Orono's stated pay rate is \$16.00 per hour. He also noted that while Long Lake has sought to increase the pay rate for LLFD firefighters, Orono has resisted Long Lake's requests for an LLFD increase.

19. Mayor Miner, echoing Chief Heiland, credibly testified that, considering the relatively small population of the communities from which both the LLFD and the Orono Fire Department draw recruits, Long Lake likely will not be able to hire additional firefighters to augment the overall force or to replace the ones that signed on with Orono. Mayor Miner noted that expanding the geographic range for the LLFD's recruitment efforts is not feasible, because paid-on-call firefighters must live within 15 minutes of their fire stations in order to respond quickly in case of emergency. Mayor Miner likewise observed that morale in the LLFD has been harmed by the ongoing conflict between Long Lake and Orono over fire protection services.

20. Former Long Lake Fire Chief and Current Orono Fire Chief James Van Eyll acknowledged that, during his time leading the LLFD, the longstanding goal of the LLFD

was to employ 50 paid-on-call firefighters, and he admitted that he was not able to achieve that goal. Chief Van Eyll said that he adopted a scaled-back goal at Long Lake to conserve a force of more than 40 firefighters, which he succeeded in doing. Chief Van Eyll did not experience problems caused by firefighters working for multiple departments when he was the LLFD Fire Chief. He believes it is sustainable for individual firefighters to serve two departments, and he pledged to continue to allow Orono's firefighters to do so.

21. Chief Van Eyll observed that when the Orono Fire Department begins active operations, while some calls that previously would have gone to the LLFD will instead go to the Orono Fire Department, the total number of emergency calls in the area should remain static, as the total area being served by the two departments will remain the same as the area currently being served solely by the LLFD. Therefore, he does not believe that the LLFD firefighters who have signed on with Orono will be excessively burdened by owing responsibilities to two departments. He recognizes that the firefighters serving two departments will have to meet training requirements for both departments, but he is willing to give Orono firefighters credit for training done at the LLFD to reduce their overall burden of serving two departments. Chief Van Eyll would like to work with Long Lake to put policies in place to make sure that the LLFD is not hindered by Orono's employment of LLFD firefighters. He believes a solution that is satisfactory to all can be reached, but he did not define what that solution might look like.

22. Ken Prillaman testified as an expert witness for Long Lake. He is the Texas Fire Chiefs Association Director of Professional Development. He has a wealth of experience in firefighting. He began working as a volunteer firefighter in 1978 at age 18. He served as the Fire Chief for Brooklyn Park, Minnesota from 2008 until 2018. He served as

the interim Fire Chief in Excelsior in the summer of 2019, and then moved to Texas, where he became the Fire Chief of Wichita Falls, Texas. He was named the 2022 Texas Fire Chief of the Year. He is no longer an active fire chief, but now serves as the Director of Professional Development for the Texas State Fire Chief's Association. He has managed staffing in all kinds of fire departments, whether volunteer, paid-on-call, or career fire departments, and he has knowledge of the issues associated with fire department expansion and renovation. The Court recognized him as an expert in fire department issues.

23. Chief Prillaman testified that a reduction in geographic coverage for a fire department does not equate to a similar percentage reduction in the department's need for staffing. He gave his expert opinion that insufficient staffing of a fire department increases injury risk. The National Fire Academy recommends the deployment of 41 firefighters to fight a fire in a high-rise structure. Chief Prillaman said that any structure with three or more floors requires a larger number of firefighters to respond, and he noted that three-story apartment structures have been built in Long Lake in recent years.

24. Chief Prillaman further opined that serving two fire departments is difficult, and it is not sustainable for large numbers of firefighters to do so for long. If most of the ten firefighters now serving both the LLFD and Orono eventually leave the LLFD, the total number of LLFD firefighters would fall to the mid-30s, which Chief Prillaman opined would be detrimental to the LLFD. A reduced force would likely reduce the effectiveness of the LLFD's response to calls in the future because it would lower both the speed (meaning response time) and weight (meaning number of firefighters) of the response.

25. Chief Prillaman agreed with Chief Heiland that the LLFD would likely struggle to replace any departing firefighters, because paid-on-call firefighters must live close

enough to their fire station to be able to respond promptly to calls, and the population of the communities within that range is relatively small. As support for these opinions, he pointed out that in Chief Van Eyll's 15 years as Fire Chief of the LLFD, with a stated goal of maintaining a force of 50 paid-on-call firefighters, Chief Van Eyll managed to achieve a force of only 42 firefighters.

26. On the subject of the potentially competing demands that will be faced by the ten firefighters serving two fire departments, Chief Heiland, Mayor Miner, and Chief Prillaman all expressed concerns arising from an incident on January 2, 2024, when a medical emergency occurred a block away from Orono City Hall. A call came in to the LLFD for emergency services to respond to an individual suffering from a heart attack. Seven Long Lake firefighters who had been hired by Orono were attending a meeting at Orono City Hall at the time of the call. Only one of the seven responded to the emergency alert a block away. Five LLFD firefighters who have not signed on with Orono were present at a meeting at Long Lake City Hall, over a mile away, and all five responded to the call. Chief Heiland and Chief Prillaman both viewed this lack of response by the Orono firefighters to such a nearby incident to be concerning.

27. Conversely, Chief Van Eyll testified that he was not concerned by what happened on January 2nd, as firefighters are only required to respond to 30% of calls and firefighters can read a description of the nature of the emergency and the pending response on their phones and decide whether or not to respond on that basis. He said that he trusts his firefighters to make those decisions and noted that the emergency was adequately staffed.

28. Ben Veach and James Seals are LLFD firefighters who have signed on with the Orono Fire Department. They both credibly testified that they plan to continue to work for both Long Lake and Orono, and they do not believe that their choosing to begin work for Orono will hinder their service with the LLFD.

29. Firefighter Justin Hinker also presently serves both the LLFD and Orono, and he plans to continue with both initially, though eventually he expects to leave the LLFD after the Orono Fire Department is up and running. He does not believe his choosing to work for Orono will hinder the LLFD.

30. The parties stipulated that firefighters Ben Carlson and Patrick Cotton would testify similarly to Firefighters Veach and Seals, that they plan to serve both the LLFD and Orono, and they do not believe their service with Orono will hinder their service with the LLFD.

B. Findings on the Recruitment of Firefighters

31. On the issue of whether Orono's hiring of Long Lake firefighters has materially hindered the LLFD or will hinder the LLFD in the future, seven witnesses provided relevant testimony: Charlie Miner, Mike Heiland, Ken Prillaman, James Van Eyll, Ben Veach, James Seals, and Justin Hinker. Also relevant is the parties' stipulation that Ben Carlson and Patrick Cotton would offer testimony consistent with that of the other LLFD firefighters hired by Orono.

32. The Court first notes that it finds all witnesses to have testified credibly as to their experiences and beliefs. While the Court finds that their testimony presented few factual conflicts, the witnesses differed sharply in their analysis of the present situation and their estimation of the likelihood of future events.

33. Orono's witnesses asserted that Orono's hiring of LLFD firefighters as paid-on-call firefighters for Orono has not and will not hinder the LLFD. Orono notes that individual firefighters have a right to choose where they want to work. Orono further observes that the ten LLFD firefighters hired by Orono as paid-on-call firefighters all plan to work for both departments, and that other LLFD firefighters have successfully managed such dual responsibilities prior to this litigation. Orono concludes that the firefighters themselves are best qualified to know whether they are likely to leave the LLFD due to the burden of working for two departments, and that all ten LLFD firefighters hired by Orono as paid-on-call firefighters plan to work for both departments.

34. Orono complains that Long Lake did not offer any evidence that the LLFD was being hindered by its practices until just before the February 1, 2024 hearing, when Long Lake made its expert disclosure.

35. Finally, relying on Chief Van Eyll's testimony, Orono points out that when the Orono Fire Department begins providing services this summer, the call area currently served by the LLFD will be reduced by the area to be served by Orono. The total call area will not expand; it will simply be divided between two fire departments. Orono contends that this division of call areas should not create any increased burden on the firefighters with joint obligations to both departments. Therefore, Orono concludes, the fact that some LLFD firefighters will also work for Orono cannot justify a finding that the LLFD is being hindered by Orono in violation of the Court's July 14th Order for Injunction.

36. In response, Long Lake contends that the testimony of Chief Heiland and Chief Prillaman proves a hindrance exists. While the LLFD historically has had a small percentage of its firefighters serving more than one department, both witnesses believe that

the LLFD cannot staff an effective department if more than 25% of its firefighters serve more than one fire department. Orono has now hired nearly 25% of the LLFD to staff Orono's paid-on-call firefighting force. Long Lake further points out that contrary to his current testimony, Chief Van Eyll previously stated that "staffing would be an issue" if there were two competing fire departments in the community. (Ex. 14, p. 24, lines 2-14.)

37. Long Lake points to the events of January 2nd as an example of the kind of stress Orono's hiring practices have placed and will continue to place on the LLFD. Of the LLFD firefighters also working for Orono, only one in seven responded to an emergency call despite, despite their much closer proximity to the location of the call, as compared to the LLFD firefighters who responded en masse.

38. Orono contests the significance of the January 2nd incident, noting that the call was timely responded to, the emergency was fully staffed by twelve responding firefighters, and there is no evidence that the situation was poorly handled. Orono observes that the paid-on-call model permits firefighters to choose which calls they respond to, and in this particular case, thirty LLFD firefighters chose not to respond. Orono contends that it is odd and defamatory to criticize six non-responding firefighters for making a choice that they are permitted to make, especially one that had no negative consequences.

39. On the issue of whether Orono's hiring of LLFD firefighters has hindered the LLFD, the Court finds that Long Lake carried its burden in proving that the LLFD has been materially hindered by Orono's hiring of a significant percentage of the LLFD's paid-on-call firefighters.

40. The Court finds persuasive the testimony of Chief Heiland and Long Lake's expert witness Ken Prillaman. The Court finds credible Chief Heiland's testimony that the

LLFD will struggle to provide an effective response if more than 25% of its force were to serve more than one fire department. Service to multiple departments will likely reduce the response rate for individual LLFD firefighters, and the LLFD cannot effectively function if a substantial number of its firefighters significantly lower their response rate. The Court recognizes that the LLFD has been understaffed for years relative to its official policy. The City of Orono's Needs Assessment document, adopted by the Orono City Council as part of its plan to take over providing fire services to certain areas in Orono, stated that the LLFD was organized and resourced for 50 firefighters but has only managed to employ 42. According to Chief Prillaman's analysis of the difficulties posed by fires in larger structures, a fire at a multistory apartment building in Long Lake would stress the department's resources even at its current staffing levels, and a significant reduction in the number of paid-on-call firefighters would be catastrophic for the LLFD's effectiveness.

41. While the Court recognizes that Chief Van Eyll and the five firefighters who testified believe that Orono's hiring of Long Lake firefighters will not hinder the LLFD, the Court notes that one of those five, Firefighter Hinker, intends to leave the LLFD after the Orono Fire Department is up and running. Another long-term LLFD firefighter, Shane Gardner, left the LLFD late last year due to the conflict with Orono. Chief Prillaman, with long experience in running fire departments, credibly opined that further departures from the LLFD are likely over the long term. Moreover, even if Chief Van Eyll is correct that the new Orono hires will keep working for the LLFD, they will have additional burdens on their time by working for two departments, including fulfilling training obligations for both departments and maintaining at least a 30% response rate for both departments. Chief Heiland testified that such firefighters are likely to have a lower response rate to LLFD calls

over time, and that the LLFD cannot afford such a decrease. The January 2nd incident provides an early indication that firefighters working for both departments are less likely to respond to a call to the LLFD. While it is true that thirty LLFD firefighters did not respond to that incident and most of them were employed solely by the LLFD, it is notable that a majority of the Orono recruits who did not respond were located a single block away from the emergency.

42. As to Orono's objection on the timing of Long Lake's production of its evidence, the Court ordered that the February 1st hearing take place in order to create a record on the hindrance issue. The Court declined to rule on the hindrance issue based on the record at the previous contempt hearing because the parties did not have an adequate opportunity to develop the record as to this issue. Therefore, Long Lake was entitled to rely on the testimony and exhibits entered during the hearing on February 1st in attempting to demonstrate its allegations of violations of the Temporary Injunction. The Court set no deadlines for the disclosure of evidence by either side prior to the February 1st hearing. Accordingly, the Court finds no basis for Orono's objection.

C. Evidence of Construction Plans for the Fire Station 2 Property

43. On the issue of hindrance to the LLFD due to Orono's construction plans for the Fire Station 2 property, Orono called two additional witnesses: Thomas Stromsodt and Adam Edwards. The Court finds that these witnesses testified credibly as to their experiences and beliefs.

44. Mr. Stromsodt, an architect retained by Orono to prepare plans to build an accessory structure adjacent to Fire Station 2, said he thought he could ensure continued effective operation of the LLFD during the proposed construction project. He noted that he

has worked on structures housing first responders before, including projects on fire stations that remained operational during construction. Mr. Stromsodt explained that he would ensure minimal impact on Fire Station 2 by minimizing complications in the planning phase and maximizing communication between stakeholders.

45. Mr. Stromsodt admitted, however, that the proposed construction would cause disruption of water, electricity, and sewer to Fire Station 2 for some period of time. He further admitted that necessary cuts in the street could create barriers to exit and entry to Fire Station 2 and to use of its helipad in the event of an emergency. Mr. Stromsodt stated that the issue of egress could be mitigated by keeping a steel plate on site that could be placed over any cuts in the road in front of the station if an emergency call were to come in during construction, but he did not indicate how long it might take to position the steel plate in the event of an emergency call, nor did he say how that might be accomplished for emergency calls at night or on weekends when construction workers may not be on site.

46. Mr. Stromsodt acknowledged that, in order to minimize impact to Fire Station 2, someone must be in constant communication with the LLFD staff at the station, and the LLFD would need to participate in the planning and management of the construction project to a significant degree, including attending bi-weekly sessions to discuss the ongoing project.

47. Raising another logistical issue, Chief Prillaman testified that restrictions on entry and exit to Fire Station 2 created by road construction obstacles could create an additional danger by forcing the firefighters to back up the fire trucks into the current vehicle bay. Chief Prillaman noted that backing accidents are one of the most common causes of firefighter injuries.

48. Orono City Administrator and City Engineer Adam Edwards promised that Orono would prohibit construction workers from parking in any place that would hinder the LLFD's operation of Fire Station 2. He also described the proposed new facility as ancillary to the primary Orono Fire Department building, which will be based at another public works site in Orono as long as Long Lake controls Fire Station 2.

D. Findings on Construction on the Fire Station 2 Property

49. Orono argues that its planned construction of an interim fire facility next to Fire Station 2 would not be likely to hinder the LLFD's operations. Orono notes that it owns the property and that municipal buildings are routinely renovated and expanded without hindering a municipality's ability to provide timely critical response to emergencies. Orono's architectural firm, Oertel Architects, specializes in municipal buildings and has designed the proposed accessory structure to have as little impact as possible on Fire Station 2. The planned new building is set off a little distance from the existing fire station. (Ex. 117, p. 4.) A project manager on site during the construction process would coordinate with the stakeholders, and weekly meetings would be held to ensure proper communication.

50. Orono notes that it addressed the comments submitted by Long Lake on its proposed construction project, including concerns about egress from the fire station during construction. Mr. Stromsodt and City Administrator and Engineer Adam Edwards explained how any temporary cut in the road could be quickly covered by a steel plate if there was an emergency situation during construction. However, in the view of the Court, this mitigation technique was not adequately explained. It was not clear how the construction workers would be notified in the event of an emergency or how long it might take for the construction personnel to stop their regular work and install the steel plate over

the cuts in the road. For a fire department, a speedy response is essential, and construction personnel are not trained in such rapid operations.

51. Furthermore, as Long Lake points out, Mr. Stromsodt admitted that electricity, water and sewer would be cut off to Fire Station 2 for some period of time as part of the construction project. The length of time was not specified during the hearing, but it is self-evident that the cutoff of essential utilities to a fire station would substantially hinder the station's operations. While Fire Station 2 has a standalone generator for unanticipated power outages, Chief Prillaman noted that it is unclear how many of the station's functions the generator could operate. And no solution was proposed to mitigate the cutoff of water and sewer to the building.

52. Additionally, while Mr. Stromsodt's plan for open and constant communication between staff at the fire station and the personnel charged with the construction is well-taken, it is unclear who at the LLFD could devote sufficient time to participate in such continual communications regarding Orono's construction without hindrance to their regular duties owed to the LLFD. Chief Heiland is the most likely candidate, as he is one of the few Long Lake personnel in constant communication with the staff operating Fire Station 2. The Court finds that devoting a major time commitment to monitoring Orono's construction activities would likely hinder Chief Heiland in his primary role as the Fire Chief of the LLFD.

53. On the issue of potentially overlapping calls, the Court also finds it more probable than not that danger would arise from the operation of two separately organized fire departments adjacent to each other and served by the same narrow roadway. While this adjacency might be acceptable for many non-emergency municipal functions, it likely would

prove hazardous to emergency personnel who are operating at a high speed, trying to respond to separate, concurrent emergencies. The Court also finds it likely that overlapping calls will occur, as they have in the past. The frequency of calls for fire department service in the communities served by the LLFD and eventually, the Orono Fire Department will predictably rise at certain times of the year (*e.g.* July 4th, when many celebrations involving fireworks and other risky activities occur in and around Lake Minnetonka), and events (*e.g.* major storms that lead to downed trees and power lines, as well as other hazards), meaning the potential hindrances associated with overlapping calls are likely to recur regularly.

54. Finally, it is notable that Orono's proposed building adjacent to Fire Station 2 is designed to be a bare-bones interim structure, lacking bathrooms or other necessary facilities, including fire station-specific requirements like eye wash stations. Orono claims the interim structure is intended to serve as a garage and vehicle bay when Orono takes over control of Fire Station 2 after the expiration of the FP Contract. But that takeover is nearly two years away, and it is not at all clear how the Orono Fire Department would operate out of such a bare-bones building in the meantime, without hindering the operations of the LLFD. The Court finds it is more probable than not that Orono firefighters operating out of this building would seek access to Fire Station 2 for all the facilities that the Orono accessory structure could not provide.

55. According to Mr. Stromsodt, the structure to be constructed is intended to be ancillary to another building elsewhere in Orono, an unknown distance away. Mr. Edwards identified this other building as an Orono public works facility, but he did not say how far away it was or whether it would be convenient for firefighters working adjacent to Fire Station 2 to travel there to use the bathroom, eye wash station, or other facilities. Orono

firefighters operating out of the new building presumably would need access to such facilities, and Orono presented no evidence on how they would have convenient access without resorting to seeking access to Fire Station 2. Requests for such use of Fire Station 2 by Orono firefighters could also potentially hinder the LLFD's operations, considering the hard feelings the conflict between the two cities has engendered on both sides.

56. In its March 13, 2024 post-hearing submission to the Court, Orono reported that on March 11, 2024, its City Council adopted Resolution 7458, deciding not to accept any of the bids it received for the accessory structure to be built adjacent to Fire Station 2. Resolution 7458 recites as the basis for the City Council's decision that the bids were well above what Orono anticipated. The lowest bid for the project came in at \$1,147,000, which was nearly \$400,000 higher than the architect's Opinion of Probable Cost for the project of \$750,000. Resolution 7458 also states that Orono identified an alternative site that will allow it to forego construction at the site of Fire Station 2. Resolution 7458 does not state that the bids were rejected due to any potential hindrance of the operations of the LLFD.

57. Orono argues that its decision not to proceed with its proposed construction next to First Station 2 renders that hindrance issue moot. Long Lake responds that it appreciates that Orono's discontinuance of its construction plans helps to alleviate Long Lake's concerns for hindrance of its continued operation of Fire Station 2, but argues that the City Council resolution documents submitted by Orono show that Orono was more concerned with the cost overage than any hindrance of the LLFD. Long Lake also notes that until Orono voted not to accept any of the bids for the project, it was continuing to pursue the construction project without Long Lake's involvement, contrary to the First Contempt Order.

58. The Court finds that Orono's decision to discontinue its construction plans for the Fire Station 2 site will remove the likelihood of a future hindrance by Orono of LLFD's operation of that station, but the Court's hindrance findings regarding Orono's actions prior to its March 11, 2024 adoption of Resolution 7458 remain valid.

E. Further Claimed Violations of the Temporary Injunction and the First Contempt Order

59. During the telephone conference on December 7, 2023, the Court stated that Long Lake would be allowed to present evidence of new instances at the February 1st hearing regarding its claims that Orono was continuing to violate the Temporary Injunction and the First Contempt Order.

60. At the February 1st hearing, Long Lake presented evidence of several claimed additional violations, including: (1) the hiring of Patrick Cotton and Chris Adams, waiving normally required exams; (2) Orono's continued advertising for "experienced firefighters" for paid-on-call positions; (3) the lack of information provided by Mr. Edwards regarding the Court's limitations on recruiting; (4) Orono council member Matt Johnson's lengthy talk with firefighter AJ Rewart at a NAPA Auto store about his work at Long Lake and whether he would be joining Orono; (5) Chief Van Eyll's outreach to firefighters on their birthdays and holidays; (6) the proposal at a recent meeting by Orono members of the relief association to combine the service pensions of the two departments. The Court finds the first of these claims to have been established, but not the others, as discussed below.

61. Orono argues that the hiring of Patrick Cotton as a paid-on-call firefighter did not violate the Court's Order. Chief Van Eyll testified he had no contact with Mr. Cotton after the Court's Contempt Order, and Orono notes that Mr. Cotton had a right to apply and join the Orono Fire Department. Mr. Cotton also testified, per the stipulation, that he

will continue to work for both departments and did not view his hiring as hindering the LLFD in any manner whatsoever.

62. The evidence was undisputed that Orono adopted a waiver of physical and psychological exams for all firefighter applicants who currently serve Orono. In the November meeting of the Orono City Council at which Mr. Cotton's employment was approved, Orono noted that its policy waives physical and psychological exam requirements for firefighters currently serving Orono who apply to join the new Orono Fire Department. It was also undisputed that the only firefighters currently serving Orono are LLFD firefighters. Thus, the waiver exclusively benefits applicants from the LLFD.

63. At the hearing, Chief Van Eyll sought to justify the waiver by stating that he was very familiar with all the LLFD firefighters that he had hired into the Orono Fire Department, and as these individuals had already passed physical and psychological exams conducted by Long Lake, he did not believe further physical and psychological exams prior to their hiring by Orono was necessary. Chief Van Eyll further stated that all firefighters would be required to meet with a psychologist, at minimum, on a yearly basis as mandated by the State of Minnesota.

64. Long Lake's expert, Chief Prillaman, stated that physical and psychological exams are standard for all firefighter applicants, and he was unaware of any other fire department ever waiving physical and psychological exams for any applicant group. He opined that Orono's waiver of the requirements for a subset of its firefighter applicant pool was reckless and dangerous. He believes the waiver discounts the importance of firefighter wellness, and that Orono's only purpose in offering the waiver was to incentivize applications by the targeted group of firefighters.

65. In its closing argument, Orono made no response to Long Lake's arguments and evidence about the waiver.

F. Findings on Alleged Violations Following Entry of the Contempt Order

66. The Court finds that Orono's waiver of the physical and psychological exams for firefighters serving the city of Orono, a standard requirement for entry into a fire department, was a recruitment tool aimed directly at LLFD firefighters, as they are the only firefighters currently serving the city of Orono. As such, the waiver violates the provision in the Temporary Injunction that enjoined Orono from targeting its recruitment efforts at LLFD firefighters.

67. The Court does not find that Long Lake has proven its other claimed additional violations.

68. Long Lake objected to an advertisement posted by Orono seeking "experienced firefighters." The Court previously stated that Orono may generally advertise for firefighters; what it cannot do is specifically target LLFD firefighters for recruitment. Long Lake argues that Orono's advertisement for "experienced firefighters" must be directed at Long Lake; the Court does not find this to be a necessary inference. The Court will not order Orono to refrain from noting in its advertisements that it generally prefers "experienced" firefighters. Applicants may have gained experience anywhere, not just at the LLFD. As long as Orono's advertising does not include language that is focused on LLFD firefighters (such as the waiver does), the Court does not find that a general preference for unspecified "experience" runs afoul of the Court's prior orders.

69. Long Lake next argues that Orono's failure to instruct its new recruits in the outlines of the Temporary Injunction constitutes a violation of the Court's orders. The

Court agrees that Orono must comply with the Court's orders, which means Orono must keep its staff apprised of the City's obligations under those orders. However, Long Lake has not offered any evidence that Mr. Edwards' failure to inform Orono's firefighters of the terms of the Temporary Injunction has led individual Orono firefighters to violate the injunction. While the Court does not find a violation has been shown, the Court cautions Orono that leaving Orono firefighters in the dark about the Court's orders could lead to violations in the future.

70. Next, Long Lake asks the Court to hold Orono in contempt for an alleged conversation between Orono Councilman Matt Johnson and LLFD firefighter AJ Rewart. Long Lake contends that Mr. Johnson spoke with Mr. Rewart for forty-five minutes at an auto parts store about Mr. Rewart's work for the LLFD and whether he would be joining the Orono Fire Department. The Court agrees with Long Lake that this allegation, if substantiated, would constitute a violation of the Temporary Injunction as well as the First Contempt Order, which expressly forbade "direct contact between Orono City Officials . . . and Long Lake firefighters for the purpose of discussing the opportunities at the new fire department, persuading someone to join it, or laying the groundwork to enlist current LLFD firefighters in filling out the ranks of Orono's new fire department." (First Contempt Order at 14.) However, Long Lake provided no evidence of this conversation aside from a third-hand account by Mayor Miner. While the Court overruled Orono's hearsay objection and allowed Mayor Miner to testify on the basis that the statements being testified to were those of a party opponent, Long Lake did not call the councilman or firefighter in question to testify about the substance of their conversation. The Court will not base contempt sanctions on a non-participant's account of this alleged conversation.

71. Long Lake again raises the issue of Chief Van Eyll's continuing to contact LLFD firefighters about birthdays and holidays, as noted in the First Contempt Order. The Court did not find clear evidence at the hearing that Chief Van Eyll had any new contacts of this type following issuance of the First Contempt Order. The Court concludes that Long Lake did not meet its burden to prove that Chief Van Eyll made such contacts following the First Contempt Order for the purpose of laying the groundwork for future recruitment of LLFD firefighters.

72. As to the proposal to transfer pension funds allegedly made during the meeting of Orono firefighters at the relief association, Long Lake provided no written evidence of this proposal. Long Lake cites Exhibit 24, but that exhibit is merely a Statement of Position from the Office of the State Auditor. It does not say anything about an Orono proposal regarding pension funds. Furthermore, even if Long Lake had provided evidence of the Orono firefighters' meeting and discussion, the Court's Order enjoins the City of Orono from "seeking a transfer of Long Lake firefighters' pension funds." (Order for Injunction at 2.) Orono is represented by its council members and other city officials. The Order does not enjoin individual firefighters from discussing such a transfer or offering their opinions to one another on whether a transfer would be a good idea. A statement at a meeting by a paid-on-call employee of the city does not constitute an official action of the City of Orono.

CONCLUSIONS OF LAW

1. The Court has power to punish by fine, imprisonment, or both, any misconduct which interferes with a court proceeding or is otherwise contemptuous. *See* Minn. Stat. §§ 588.01, .02, .03., 20.

2. Under Minn. Stat. § 588.01 subd. 3, constructive contempt consists of an act or acts not committed in the immediate presence of the court and of which the court has no personal knowledge. Constructive contempt may occur when a party acts in disobedience of any lawful judgment, order, or process of court. (*Id.*) “Civil contempt proceedings are designed to induce future performance of a valid court order, not to punish for past failure to perform.” *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. Ct. App. 1989) (citations omitted). *See also Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986). “In civil contempt, the function of the court is to make the rights of one individual as against another meaningful.” *Hopp v. Hopp*, 156 N.W.2d 212, 216 (Minn. 1968).

3. Upon evidence taken at an Order to Show Cause hearing held pursuant to Minn. Stat. § 588.09, the Court must determine the guilt or innocence of the person proceeded against, and if the person is adjudged guilty of the contempt charged, the person shall be punished by a fine of not more than \$250, by imprisonment, or both. Minn. Stat. § 588.10. However, as “[t]he power to punish for contempt is an inherent power of constitutionally created courts in Minnesota,” the Court has discretion and inherent authority to impose a fine beyond the statutorily authorized amount in order to induce compliance. *State by Johnson v. Sports & Health Club, Inc.*, 392 N.W.2d 329, 336 (Minn. Ct. App. 1986).

4. In order to impose a penalty for civil contempt or failure to comply with a Court’s order, the order itself must clearly define the action a party must or must not take. *Hopp*, 156 N.W.2d at 216. Compliance must be within the party’s power. *Zieman v. Zieman*, 121 N.W.2d 77, 79 (Minn. 1963).

5. The Court concludes that Long Lake has proven violations of the provision of the Temporary Injunction enjoining Orono from hindering operations of the LLFD before the end of this litigation.

6. The Court finds that Long Lake established, by a preponderance of the evidence, that Orono willfully disobeyed the Temporary Injunction by hindering operations of the LLFD when it hired ten LLFD firefighters, causing the number of LLFD firefighters serving two departments to rise above 25%. Furthermore, the Court finds that Long Lake established, by a preponderance of the evidence, that Orono willfully disobeyed the Temporary Injunction's prohibition against Orono's recruitment of LLFD firefighters by offering a waiver of the standard physical and psychological exam requirements for a class of applicants that included only current LLFD firefighters.

7. The Court finds that Long Lake established, by a preponderance of the evidence, that Orono's proposed construction of an ancillary building next to Fire Station 2, for which plans were prepared and submitted to the Orono City Council, also would hinder the operations of the LLFD.

8. Therefore, Orono is found to be in constructive civil contempt. The Temporary Injunction clearly defined the actions Orono must not take: Orono was enjoined from hindering the LLFD either through recruitment of LLFD firefighters or through its planning process for an accessory structure that would affect the LLFD's operation of Fire Station 2. The Court finds that it was well within Orono's power to comply with the Temporary Injunction, but Orono failed to do so with respect to firefighter recruitment, and it also failed to do so with respect to the impact of its plans for an accessory structure on the operation of Fire Station 2. The Orono City Council's vote on March 11, 2024 to reject he

bids submitted to build the proposed accessory structure does not eliminate the basis for the Court's finding of contempt based upon Orono's planning process for the structure prior to that vote, although it does lead the Court to find that no continuing contempt will occur.

9. Under Minnesota law, the Court has discretion to determine the amount of the fine required to induce compliance with its orders. *State by Johnson v. Sports & Health Club, Inc.*, 392 N.W.2d at 336.

10. In its closing brief, Long Lake requests the following sanctions for violation of the Court's orders:

Grant the interim attorneys' fees request and the subsequent petition; fine Orono \$8,000 for the four additional violations outlined above; and due to the recruitment violations, fine Orono \$1,000 per day per firefighter from the date of hire (October 9, 2023, for eight of the firefighters, November 28, for Mr. Cotton, and January 9, 2024, for Mr. Adams) to date, and prohibit Orono from retaining more than eight Long Lake Firefighters going forward; and finally prohibit the building of any accessory structure next to Station 2 without the consent of the City of Long Lake.

9. The Court is cognizant of the challenges facing the LLFD and the difficulty it faces in maintaining a sufficiently large force of firefighters to meet its obligations to the public while Orono competes to recruit the same limited number of available firefighters. The Court also recognizes the rights of individual firefighters to work wherever they choose. To strike a balance between those competing considerations, the Court will enjoin Orono from hiring any additional LLFD firefighters during the course of this litigation, beyond the ten who have currently signed on with the Orono Fire Department, but the Court will not order Orono to dismiss any of the firefighters it has already hired.

10. Based upon the Court's finding that Orono's waiver policy constitutes a recruitment incentive limited solely to LLFD firefighters, and as Orono applied the waiver to two additional firefighters hired after the Temporary Injunction and the First Contempt

Order prohibited such recruitment incentives, the Court finds that Orono should be assessed a fine for its continued violations of the Court's past orders.

11. Because Orono has decided not to proceed with the proposed accessory structure next to Fire Station 2, the Court finds no continuing violation is likely to occur with respect to that proposed structure. Nonetheless, in light of the Court's findings as to the hindrance that construction of such a structure would pose to operations of the LLFD, the Court will prohibit Orono from building any structure next to Fire Station 2 during this litigation without the consent of Long Lake.

ORDER

1. Plaintiff City of Long Lake's motion for an additional finding of constructive civil contempt against Defendant City of Orono is **GRANTED**.

2. Orono shall discontinue its policy of providing waivers to LLFD firefighters for the physical and psychological exams generally required of all applicants to join the Orono Fire Department. Orono shall pay a fine to the Court of \$1000 for each of the two hires made under its waiver policy after issuance of the Court's First Contempt Order. Any further waivers issued by Orono to LLFD firefighters will result in an additional \$1000 fine for each violation.

3. Orono is enjoined from hiring any current LLFD firefighters, aside from the ten individuals it has already hired. Orono may not hire any other firefighters who, as of the date of this order, are employed by the LLFD, except with the express written permission of Long Lake.

4. Orono is hereby ordered to refrain from building any structure on the Fire Station 2 property during this litigation without the consent of Long Lake.

5. Orono shall pay all costs and attorney's fees incurred by Long Lake in bringing its motion for a finding of constructive civil contempt.

6. Further violations of the Temporary Injunction, the First Contempt Order, or this second Order for Contempt may result in other contempt sanctions.

7. In its discretion, the Court has determined that Long Lake is not required to post a bond under Minn. R. Civ. P. 65.03.

8. The parties are directed to continue to work with their mediator to attempt to resolve their differences and agree upon a transition plan to continue to honor their contractual obligations to one another through December 31, 2025, while preparing for the future provision of fire protection and emergency services to their citizens after the contracts between them with respect to fire protection services and Fire Stations 1 and 2 are scheduled to expire. The parties shall report to the Court within 60 days of the date of this order on their progress in mediation.

BY THE COURT:

Dated: March 25, 2024

Laurie J. Miller
Judge of District Court