

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

City of Long Lake,
Plaintiff,

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

ORDER FOR CONTEMPT

vs.

City of Orono,
Defendant.

The above-entitled matter came on for a hearing at the Hennepin County Government Center before the Honorable Laurie J. Miller on November 8, 2023, on Plaintiff City of Long Lake’s motion for an order to show cause and for a finding of constructive civil contempt against Defendant City of Orono.

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”).

Based upon the pleadings, affidavits, memoranda, and the arguments of counsel, the Court makes the following:

FINDINGS OF FACT

A. Background of the July 14, 2023 Order for Preliminary Injunction

1. The cities of Long Lake and Orono are Minnesota municipal corporations, located adjacent to one another in the western suburbs of Minneapolis. The Long Lake Fire

Department (“LLFD”), in operation since 1915, has historically provided service to surrounding communities, including Orono. (Declaration of Mayor Charlie Miner, filed June 23, 2023 (“First Miner Decl.”), at ¶¶ 3-4.)

2. Currently, Long Lake, Orono, and nearby municipality Medina are parties to a Contract for Fire Protection dated October 15, 2002 (“the FP Contract”). (Declaration of Ashley Ramstad, filed October 25, 2023 (“Ramstad Decl.”), Exhibit 5.) The FP Contract’s current date of expiration is December 31, 2025. (*Id.*; *see also* First Miner Decl. at ¶ 11.)

3. The LLFD operates out of two fire stations, Fire Station 1 and Fire Station 2. (First Miner Decl. at ¶ 12.) The LLFD staffs Fire Stations 1 and 2 with approximately 42 firefighters. (*Id.* at ¶ 14.) Long Lake and Orono are each 50% owners of Fire Station 1, which is located at 340 Willow Drive N. in Orono, just outside the Long Lake city limits. (*Id.* at ¶¶ 8-9.) The terms of their joint ownership are set forth in a Contract for Joint Ownership dated August 2001 (“the JO Contract”). (Ramstad Decl., Exhibit 4.) Like the FP Contract, the JO Contract is scheduled to expire on December 31, 2025.

4. Fire Station 2 is located at 3770 Shoreline Drive in Orono. (First Miner Decl. at ¶ 12.) It is owned 100% by Orono. (*Id.*) Under the FP Contract, and an Addendum dated December 12, 2011, the LLFD manages the ongoing operation of both fire stations. (First Miner Decl., Exhibits B and C.)

5. In September 2022, the Orono City Council passed a resolution to establish the Orono Fire Department, and Orono began to take steps to set up its own fire department and to take over control of Fire Stations 1 and 2. (*Id.* at ¶¶ 20, 21; *see also* Declaration of Adam T. Edwards, filed June 29, 2023 (“First Edwards Decl.”), at ¶ 11.)

6. In October 2022, Long Lake identified a ladder truck offered for sale that Long Lake wished to purchase for the LLFD. Long Lake sought the approval of each contracting city for the purchase as required under the FP Contract. (First Miner Decl. at ¶ 22.) While that approval process was ongoing, Orono used the knowledge it gained about the truck from Long Lake to buy the truck itself. (*Id.*)

7. In December 2022, Orono hired James Van Eyll, who had served as the LLFD Chief for 15 years, to serve as chief of the newly forming Orono Fire Department. (Declaration of James Van Eyll, filed June 29, 2023 (“First Van Eyll Decl.”), at ¶¶ 2, 3.) Thereafter, Orono’s new Chief Van Eyll began approaching LLFD firefighters to recruit them to join the Orono Fire Department. (First Miner Decl. at ¶ 25.) Chief Van Eyll noted that Long Lake firefighters do not have non-compete agreements and are able to work for more than one department. (First Van Eyll Decl. at ¶¶ 4-6.) While Chief Van Eyll has committed to allowing Orono firefighters to work for more than one department, he has conceded that in some situations, such as when firefighters are assigned to a duty crew for the Orono Fire Department, he will insist on firefighters remaining for their entire scheduled shift, meaning they would not be able to respond to calls from the LLFD. (*Id.*; *see also* Declaration of James Van Eyll, filed October 25, 2023 (“Second Van Eyll Decl.”), at ¶ 15.)

8. In January and February 2023, Orono representatives met with legislators to seek support for legislation that would give Orono control of some or all of the LLFD firefighters’ pension funds in 2024, before the December 31, 2025 expiration of the FP Contract. (First Miner Decl. at ¶ 24.)

9. Orono rejected the Capital Improvement Plan submitted by Long Lake in 2022, and it has refused to approve future capital budgets for the LLFD. (First Miner Decl.

at ¶ 28.) Orono has agreed to evaluate shared equipment purchases under the parties' contract on a case-by-case basis. (First Edwards Decl. at ¶ 18).

10. On May 8, 2023, Orono created a draft Needs Assessment laying out Orono's plan to take over providing fire services to certain areas in Orono and the surrounding towns that are now served by the LLFD. On June 12, 2023, the Orono City Council formally adopted the Needs Assessment. (First Miner Decl. at ¶ 31.) The assessment includes a plan for Orono to assume control of Fire Station 2 in 2024. One Orono council member stated that Orono was "prepared to take all Long Lake firefighters" to serve the area around Fire Station 2. (*Id.* at ¶ 26.)

11. On June 23, 2023, Long Lake commenced this action, requesting a temporary injunction enjoining Orono from violating the 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.

12. Per Rule 65.02 of the Minnesota Rules of Civil Procedure, the Court granted Long Lake's motion for a temporary injunction following a hearing on June 30, 2023. The Court's Order on Plaintiff's Motion for Temporary Injunctive Relief, issued on July 14, 2023, prevented and enjoined Orono from a number of specific actions, including "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." (Order on Plaintiff's Motion for Temporary Injunctive Relief, issued July 14, 2023 ("Order for Injunction") at p. 2). The Court also enjoined Orono generally from violating either the FP Contract or the JO Contract, specifically from "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 pp. 1-2.)

B. Long Lake's Contempt Motion, Claiming Orono Violated the Injunction

13. On October 13, 2023, Long Lake filed a Notice of Motion and Motion for an Order to Show Cause, a memorandum supporting the motion, and three accompanying declarations, claiming that Orono has violated the Court's July 14th Order.

14. One of Long Lake's declarations, from Long Lake Mayor Charlie Miner, asserted that Orono had actively recruited and hired several members of the LLFD following issuance of the Court's Order. (Declaration of Charlie Miner, filed October 13, 2023 ("Second Miner Decl."), at ¶¶ 4, 15, 16.) Mayor Miner further asserted that Orono Chief Van Eyll had disclosed at a public meeting that concrete steps had been taken by Orono to work with an architect in developing plans to construct a building next to Fire Station 2 to house Orono's fire trucks, all without consulting Long Lake. (*Id.* at ¶ 9).

15. Long Lake's second declaration, by Long Lake Counsel Sarah Greening, described the substance of a video recording of a public gathering held by Orono regarding its new fire department on September 27, 2023. (Declaration of Sarah D. Greening, filed October 13, 2023 ("Greening Decl."), at ¶¶ 4-14.) In various advertisements disseminating information prior to the event, the event was referred to as the Firefighter Recruitment Open House. (Third Declaration of Charlie Miner, filed November 1, 2023 ("Third Miner Decl."), Exhibits A, B, C, D, E, F, G.)

16. Long Lake's third declaration, by firefighter Cole Farley of the LLFD, described a series of communications he had with Orono Mayor Dennis Walsh, in which he

reported that Mayor Walsh threatened him with litigation if he did not stop talking negatively to others about Orono's recruiting efforts for the Orono Fire Department. (Declaration of Cole Farley, filed October 13, 2023 ("Farley Decl."), at ¶¶ 7-17.) Mr. Farley also described a text message exchange he had with a friend and former LLFD firefighter when he learned that his friend had applied to the Orono Fire Department. (*Id.* at ¶¶ 2-6.) Mr. Farley described this text message exchange as a normal, funny text conversation between friends, and denied pressuring his friend not to apply to Orono. (*Id.*)

C. Orono's Response, Claiming that It Complied with the Injunction

17. In response to Long Lake's motion, on October 25, 2023, Orono filed five declarations of Long Lake firefighters hired by Orono, along with declarations from Orono Mayor Dennis Walsh, Orono Fire Chief James Van Eyll, Orono City Administrator Adam Edwards, and Orono Counsel Ashley Ramstad. Orono also filed a memorandum opposing Long Lake's motion for an order to show cause.

18. In their declarations, the five Long Lake firefighters acknowledged receiving an invitation to the Orono Firefighter Recruitment Open House in September, and they acknowledged that they were hired to join the Orono Fire Department on either October 8 or 9, 2023. The firefighters all stated that they had applied to join the Orono Fire Department prior to receiving the invitation to the Recruitment Open House. They asserted that they had never been directly approached by anyone from the City of Orono to apply to the Orono Fire Department, and they denied that the text invitation from Chief Van Eyll played any role in their eventual acceptance of employment by Orono. The firefighters further noted that they were originally scheduled to begin employment with Orono on

August 28, 2023, before the text message invitation was issued, but that their start dates were delayed due to the parties' mediation in late September.

19. In his declaration, Chief Van Eyll stated that he believed he could invite the Long Lake firefighters to Orono's Recruitment Open House, because they had already applied to Orono, and he "also wanted all or most of them there so they could meet the non-LLFD firefighters." (Declaration of James Van Eyll, filed October 25, 2023 ("Second Van Eyll Decl."), at ¶ 14.)

20. In their declarations, Chief Van Eyll and Orono City Administrator Adam Edwards acknowledged that Orono has engaged an architect to design a building on the Fire Station 2 property. (Declaration of Adam Edwards, filed October 25, 2023 ("Second Edwards Decl."), at ¶ 4; Second Van Eyll Decl. at ¶ 10.) Orono has walked the property with the architect and has made preliminary plans to build a structure on the north side of the existing Fire Station 2. (*Id.*) Mr. Edwards and Chief Van Eyll each claim that, in their professional opinions, such a structure can be built without hindering or interfering with the LLFD's ability to respond to calls, and they both state that they plan for the structure to be constructed in such a manner. (*Id.*) They offered no evidence, however, that they invited Long Lake to any meetings with their architect, shared any of their developing plans with the LLFD, or sought Long Lake's input or approval regarding such plans.

21. In his declaration, Mayor Walsh asserted that he had heard that the LLFD leadership, including Mr. Farley, had been calling applicants to the Orono Fire Department traitors and derogatory names, and he called Mr. Farley to ask him to stop the name-calling and harassment issues going on with the Orono Fire Department applicants. (Declaration of Dennis Walsh, filed October 25, 2023 ("Walsh Decl."), at ¶¶ 11-12.) Mayor Walsh admitted

that he told Mr. Farley “that if he or anybody ever got sued for workplace harassment or toxic workplace issues it would be a public record and that nobody wants that on their record.” (*Id.* at ¶ 12.) Orono argued that the applicant with whom Mr. Farley had communicated by text message subsequently backed out of his application to Orono because of Mr. Farley’s comments, which the applicant did not believe were made in jest. (Second Van Eyll Decl. at ¶¶ 17-20 (asserting that Mr. Farley’s friend “did not view the banter as joking” and that he pulled his application to Orono shortly after Mr. Farley’s meeting with Chief Van Eyll); Walsh Decl. at ¶ 15 (asserting that Chief Van Eyll told Mayor Walsh that “Mr. Farley did send disturbing texts to an applicant, who did not think they were in jest”).)

D. Long Lake’s Reply in Support of Its Contempt Motion

22. On November 1, 2023, Long Lake filed its reply memorandum along with three supporting declarations, including an additional declaration from Long Lake Mayor Charlie Miner, attesting to the nature of the advertising for the Orono Firefighter Recruitment Open House held on September 27, 2023. (Third Miner Decl. at ¶¶ 7-14, Exhibits A-G.) Mayor Minor stated that he had viewed the official recording of the October 9, 2023 Orono City Council meeting, and at the meeting, Chief Van Eyll acknowledged that all of the paid-on-call hires thus far for the Orono Fire Department are current LLFD firefighters. (Third Miner Decl. at ¶¶ 2, 3.) Mayor Minor further reported that Chief Van Eyll told the Orono City Council on October 9, 2023 that he had spoken with LLFD members at “multiple recruiting events, lunches, text messages for happy birthdays and happy anniversaries, those types of things.” (*Id.*)

23. In addition, Long Lake filed a declaration of Blair Mileski, the friend with whom Mr. Farley had texted about his application to the Orono Fire Department. Mr.

Mileski stated that he understood Mr. Farley to be communicating in jest, and he did not feel harassed, persecuted or anything negative upon receiving Mr. Farley's text message. (Declaration of Blair Mileski, filed Nov. 1, 2023, at ¶¶ 7-8, 10.) Mr. Mileski stated that Mr. Farley's text message did not cause him to withdraw his application from Orono. On the contrary, he explained that on October 23, 2023, he sent the following text message to Chief Van Eyll to explain his reason for withdrawing his application: "I decided I do not want to join Orono fire due to your and the mayor's actions I have completely lost my desire to work for Orono." (*Id.* at ¶ 13.)

24. Long Lake also filed an additional declaration of Mr. Farley, explaining that he disagreed with Mayor Walsh's characterization of the telephone call he made to Mr. Farley as "friendly" or "cordial." (Declaration of Cole Farley, filed Nov. 3, 2023 ("Second Farley Decl."), at ¶¶ 3, 5.) Instead, Mr. Farley stated that he "felt personally threatened and intimidated by Mayor Walsh, particularly because he mentioned 'lawsuits' multiple times and the difficulty that comes with lawsuits" and further that Mayor Walsh "started to strongly impress upon me the seriousness of certain behaviors and the litigation that could come from them." (*Id.* at ¶¶ 5-6.)

E. Orono's Motion to Strike and Ensuing Hearing on Both Parties' Motions

25. On November 3, 2023, Orono filed a motion to strike the three reply declarations filed along with Long Lake's reply memorandum.

26. On November 7, 2023, Long Lake filed its response to Orono's motion to strike.

27. On November 8, 2023, the Court held a hearing on Long Lake's motion for an order to show cause why Orono should not be held in contempt and for an order finding

Orono in constructive civil contempt. The Court also heard Orono's motion to strike Long Lake's reply declarations. At the November 8th hearing, Counsel for Orono asked that if Orono's motion to strike were to be denied, the record should be held open to permit the filing of reply declarations by Orono. The Court agreed to hold the record open for a week to allow Orono to file reply declarations from three former Long Lake firefighters now employed by Orono and from Chief Van Eyll.

28. On November 15, 2023, Orono filed declarations from two additional Long Lake firefighters hired by the Orono Fire Department. These declarations are substantially similar to the five firefighter declarations previously filed by Orono on October 25, 2023.

29. Orono also filed an additional declaration from Chief Van Eyll, providing more information about various communications he had engaged in with a number of Long Lake firefighters since issuance of the July 14th Order. (Declaration of James Van Eyll, filed Nov. 15, 2023, at ¶¶ 2-8.) Chief Van Eyll indicated that the eight conditional offers of employment as paid-on-call firefighters authorized by the Orono city council on October 9, 2023 were all made to firefighters who currently work for the LLFD. (*Id.* at ¶ 5.) Chief Van Eyll also asserted that Long Lake did not control the property where Fire Station 2 is located, and he further stated that "Orono will work with architects and contractors to ensure Long Lake will not be hindered from using Fire Station 2 and providing fire protection services to Orono and Long Lake citizens if it decides to build on the same parcel." (*Id.* at ¶ 14.) Chief Van Eyll did not state any willingness or intention to involve Long Lake in Orono's planning process with regard to Fire Station 2.

30. Following receipt of Orono's November 15, 2023 filings, the pending motions were taken under advisement.

F. The Parties' Unsolicited Post-Hearing Submissions

31. On November 13, 2023, Long Lake filed correspondence informing the Court of an Agenda Item published by Orono in advance of its Council Meeting on November 13, 2023. The published documents included “twenty-one pages of design plans” for a structure proposed to be built by Orono on the Fire Station 2 property. (Correspondence filed by Long Lake on November 13, 2023.)

32. On November 15, 2023, Orono filed correspondence responding to Long Lake's November 13th correspondence to the Court. Orono argued that the Court should not consider Long Lake's November 13th correspondence, as the Court had not authorized the submission of additional filings by Long Lake.

33. On this point, the Court agrees with Orono. The Court did not authorize additional filings by Long Lake. Furthermore, the November 13th correspondence from Long Lake is in the form of a letter, not a sworn affidavit. For those reasons, the Court will not consider the claims raised solely in this correspondence in evaluating Long Lake's present contempt motion. The issues raised in the parties' post-hearing correspondence may, however, be raised at a future hearing, through the presentation of evidence by both sides.

G. Findings on the Firefighter Recruitment Issue

34. The Court finds that on September 27, 2023, Orono held a Firefighter Recruitment Open House. The Court further finds that, as its title reflects, this event was an event to recruit firefighters to work for Orono. Information concerning the event was publicly disseminated in multiple ways, including via general advertising through paper flyers, through posts on social media, and through emails from a general city listserv. Chief Van Eyll also communicated directly about this event with eleven individual Long Lake

firefighters via text message. At the time Chief Van Eyll sent these text messages, three of the recipients were former Long Lake firefighters, and eight were current Long Lake firefighters. At the time Chief Van Eyll sent these text messages, none of the recipients had yet been hired as Orono firefighters. The Court finds that these text messages constituted “recruiting Long Lake firefighters to begin working for the Orono Fire Department,” within the meaning of the Court’s July 14th Order for Temporary Injunction.

35. Orono argues that Chief Van Eyll’s direct communications with individual Long Lake firefighters did not amount to “recruiting” within the meaning of the Court’s July 14th Order, because these firefighters had already applied for jobs with the Orono Fire Department. Orono concedes, however, that the firefighters had not yet been hired by Orono and were still employed by Long Lake. In excuse of Chief Van Eyll’s actions, Orono notes that the former Long Lake firefighters were originally set to be hired on August 28 but their start date was delayed until October 9 to allow the parties to mediate first. Orono further argues that all but one of the firefighters have filed declarations stating that the Open House event did not affect their decisions to work for Orono.

36. The Court does not find either of the facts offered by Orono to excuse its challenged recruitment violations to be relevant to the issue of Orono’s compliance with the July 14th Order. The July 14th Order is clear. It enjoins Orono from “recruiting Long Lake firefighters to begin working for the Orono Fire Department.” (Order for Injunction at 2). Although the Court finds that Orono was not enjoined from publicizing its recruiting event to the general public, Chief Van Eyll’s direct text messages sent to firefighters employed by the LLFD, inviting those firefighters to a Firefighter Recruitment Open House held by Orono, unquestionably constitutes “recruiting” within the ambit of the July 14th Order.

37. The Court used the term “recruiting” according to its ordinary, plain language meaning. The first listed definition for “recruit” in the Merriam-Webster dictionary includes multiple iterations of its primary meaning. “(1) a: to fill up the number of with new members . . . b: to increase or maintain the number of . . . c: to secure the services of . . . d: to seek to enroll . . .” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/recruit> (last visited Nov. 20, 2023)). Chief Van Eyll’s direct communications with LLFD firefighters, inviting them to attend an Orono recruiting event, fall well within this definition. These LLFD firefighters had not yet been hired by Orono when Chief Eyll reached out to them. He wanted them to attend, in part because he wanted them to get to know Orono’s other prospective firefighters. This admission by Chief Van Eyll demonstrates that he viewed the event as a team-building exercise for those he was hoping to hire at the Orono Fire Department. That certainly meets the definition of an action designed “to fill up [the Orono Fire Department] with new members.”

38. The Court further notes that Chief Van Eyll’s statements at the Orono City Council meeting indicate that he has not felt bound by the Court’s ruling to avoid communicating with Long Lake firefighters as part of his marketing efforts for the new Orono Fire Department. Instead, it appears that he believes his employer desires him to maintain his connections with Long Lake firefighters as part of Orono’s campaign to fill out the ranks of the Orono Fire Department, and he view himself as free to have any discussion he wishes with any LLFD firefighter who applies for employment with Orono. Given that the evidence indicates Chief Van Eyll has reported that all of his new paid-on-call firefighter hires have come from the LLFD, it appears that Long Lake is his primary source of new recruits.

39. The Court finds that Orono’s overly narrow interpretation of the term “recruiting” in the July 14th Order violates both the letter and the spirit of the July 14th Order. The Court regards any direct contact between Orono City Officials, including Chief Van Eyll, 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 in the future to be “recruiting” within the language of the Court’s Order. The Court was careful in the July 14th Order not to infringe upon the rights of individuals to work where they please. Thus, any individual Long Lake firefighters who discover *on their own* that openings exist in Orono, and who then apply *on their own* to fill such openings, may proceed *on their own* with their individual application processes. But as long as the July 14th Order remains in effect, Orono cannot make any direct contact with Long Lake firefighters to encourage them to apply to Orono to begin work at Orono either immediately or in the future, nor can Orono ask Long Lake firefighters to attend recruitment events of any kind, regardless of whether such firefighters have an Orono application in the works. Neither Chief Van Eyll nor any other Orono official may communicate with any individual LLFD firefighters, if the purpose of the communication is to market the Orono Fire Department as a potential employer in any respect. All such communications fall within the definition of recruitment, which is prohibited by the July 14th Order.

40. The Court also finds that the communications by Mayor Walsh and Chief Van Eyll with Mr. Farley regarding Mr. Farley’s text messages with Mr. Mileski violated the July 14th Order’s injunction against recruiting actions by Orono. Mayor Walsh and Chief Van Eyll may not have been trying to recruit Mr. Farley personally to join the Orono

Fire Department, but they were trying to intimidate him into refraining from doing anything that might impede their efforts to recruit other LLFD firefighters. Use of such pressure tactics to clear the way for Orono's overall recruiting efforts directed at LLFD firefighters certainly falls within the dictionary definition of "recruiting" as quoted above.

41. The Court also finds that the accusation by Mayor Walsh and Chief Van Eyll that Mr. Farley and other LLFD representatives engaged in inappropriate name-calling and workplace harassment is based on nothing more than unfounded hearsay, and it is fully refuted by the sworn declarations of both Mr. Farley and Mr. Mileski. The two participants in the challenged text exchange are best positioned to explain its meaning, and they both agree that their texts were an innocuous series of jests between friends. The Court is further troubled by Orono's suggestion that Mr. Farley or others at the LLFD are responsible for Mr. Mileski's decision to withdraw his Orono application. Mr. Mileski stated that he sent a text message to Chief Van Eyll explaining his reason for withdrawal; it was due to the actions of Mayor Walsh and Chief Van Eyll, not anyone affiliated with Long Lake. Orono improperly attempts to blame Long Lake for Orono's loss of a Long Lake recruit, when it is Orono's own actions that drove that recruit away. Orono's actions, as perceived by its lost recruit, Mr. Mileski, are yet another example of Orono's refusal to acknowledge that its recruiting efforts have crossed the line drawn by the July 14th Order.

H. Findings on the Fire Station 2 Issue

42. The next issue raised by Long Lake is Orono's plan to build a new structure on the Fire Station 2 property. Long Lake contends that Orono has taken concrete steps toward building a substantial addition to Fire Station 2 in 2024, without either consulting Long Lake or seeking its approval, in violation of the parties' contract which gives Long

Lake authority over Fire Station 2 through December 2025. The video of the Firefighter Recruitment Open House on September 27, 2023 shows Chief Van Eyll stating that Orono is planning to construct an addition immediately adjacent to Fire Station 2. While the addition would not physically connect to Fire Station 2 at first, it would be built close enough to be physically connected in the future, after Orono takes over the fire station. (Greening Decl. at ¶ 14.) Long Lake argues that any such construction will likely violate the Court's Order, which enjoined Orono 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" and from "directly or indirectly committing any violation of the Contract for Fire Protection." (Order for Injunction at 1-2.) Long Lake notes that the FP Contract gives Long Lake authority to "oversee all activities and operations at Fire Station No 2 during the term of the contract," and asserts that Long Lake has not been consulted about Orono's proposed addition to Fire Station 2. (First Miner Decl., Exhibit A, p. 6.)

43. Orono does not deny that it has made preliminary plans to build an additional structure right next to Fire Station 2. However, Orono argues that neither its planning nor its construction will violate the July 14th Order. Orono relies upon the declarations of Chief Van Eyll and City Administrator Edwards, both of whom assert that the addition they plan to make next to Fire Station 2 can be constructed without hindering the ongoing operations of the LLFD. (Second Edwards Decl. at ¶ 5; Second Van Eyll Decl. at ¶ 10.) Orono further tries to draw a distinction between Fire Station 2 and the larger property where it is located. While the FP contract gives Long Lake authority to oversee activities and operations at Fire Station 2, Orono argues that nothing in the contract or any other contract provides that

Long Lake is responsible for the operations or maintenance of the land on which Fire Station 2 is located, which is owned solely by Orono. Orono also observes that since the construction of Fire Station 2, Orono has been responsible for all of the landscaping and snow removal for the property where Fire Station 2 is located, demonstrating Orono's ongoing responsibility for the property. (Second Edwards Decl. at ¶ 6.)

44. Orono argues that it must be permitted to build on the Fire Station 2 property because the Orono Fire Department plans to take over firefighting duties for the Navarre area in 2024, and it needs a facility to support its operations in that area. Orono also points out that Long Lake has not provided evidence that the construction will hinder the LLFD.

45. Long Lake regards the Orono Fire Department's planned takeover of part of Fire Station 2 in 2024 through Orono's unilateral planning and construction of a building addition, without Long Lake's approval, to be a violation of the July 14th Order. Further, Long Lake argues that Orono's focus on Long Lake's failure to show Orono's plans will hinder Long Lake's operations misstates Orono's evidentiary burden. Given that Orono has not yet discussed its plans with Long Lake, much less disclosed any details or documentation of those plans, Long Lake has had no opportunity to assess whether Orono's proposed construction will be a hindrance. As the evidence of Orono's plans is entirely within Orono's possession and control, Orono should bear the burden of showing that its plans comply with the injunction preventing Orono from interfering with Long Lake's operation of Fire Station 2 or otherwise hindering the operations of the LLFD.

46. The Court finds that Orono has taken concrete steps toward construction of a structure on the Fire Station 2 property, including by touring the property with an architect engaged for the purpose of developing plans for the new structure and formulating

preliminary plans for building the structure. The Court further finds that Orono took these steps unilaterally, without informing Long Lake, consulting with Long Lake, or seeking Long Lake's approval for expansion of Fire Station 2. Orono seems to regard its planning process to expand Fire Station 2 as entirely within its own control, unaffected by anything set forth in the July 14th Order.

47. In its memoranda and declarations, Orono focuses on the portion of the July 14th Order stating that the LLFD must not be hindered in its operations, and Orono represents that it will do its best not to be a hindrance. The Court is cognizant of the testimony of Mr. Van Eyll and Mr. Edwards predicting that the proposed structure under consideration could be built without hindering the LLFD. At the same time, the Court is conscious of Long Lake's concern that it has been shut out of the planning process and its desire to examine Orono's plans for itself, in light of its ongoing sole responsibility for the operation of Fire Station 2.

48. Because Orono's plans have not yet been produced, the Court declines to make a finding at this time as to whether Orono's planned construction is likely to hinder the LLFD within the meaning of the Court's July 14th Order. However, the Court's Order for Injunction swept more broadly than its direction that Orono must not hinder the LLFD. The Order stated: "The City of Orono is temporarily enjoined 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.*" (Order for Injunction at 2 (emphasis added).)

49. The Court finds that Orono's planning for the construction of an adjacent structure designed to physically connect to Fire Station 2 is a use of Fire Station 2 within the

meaning of the Court's Order for Injunction. To the extent Orono has taken concrete steps in its planning process, including engaging an architect, walking the property with the architect to discuss what Orono wants to construct, and developing preliminary plans for its proposed addition of a building immediately adjacent to Fire Station 2, all without either including Long Lake in the planning process or seeking Long Lake's agreement to be left out of the planning process, Orono has violated the July 14th Order. The parties' contract recognizes that Long Lake is solely in charge of Fire Station 2, for the duration of the contract. Long Lake should not have to take Orono's word for its representation that its proposed construction will not hinder the operation of Fire Station 2. Any planning process for a structure to be built adjacent to Fire Station 2 must involve Long Lake, as long as the parties' current contract remains in effect.

I. Findings on the Hindrance Issue

50. The final issue raised by Long Lake's memoranda and declarations is whether, by hiring a substantial number of Long Lake firefighters and proceeding with plans to engage in construction at Fire Station 2, Orono has "hindered" the operations of the LLFD in violation of the July 14th Order.

51. Long Lake did not provide any specific evidence of whether or how LLFD operations have been hindered since the issuance of the July 14th Order. As a result, the 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.

CONCLUSIONS OF LAW

A. Motion to Strike

1. Minnesota General Rule of Practice 115.04 allows the moving party to submit a reply memorandum, “limited to new legal or factual matters raised by an opposing party’s response to a motion.” Minn. Gen R. Prac. 115.04(c). The rule does not expressly allow or prohibit the moving party from submitting declarations or exhibits with its reply memorandum. Interpreting this rule, Minnesota courts have permitted supporting evidence to be submitted with a reply, so long as it is timely and responds to arguments raised in the opposing party’s response. *See e.g., Embree v. U.S. Bank National Ass’n*, No. 71CV11892, 2012 WL 7874400 n.2 (Minn. Dist. Ct. July 27, 2012); *Matter of Petition of U.S. Bank Nat’l Ass’n for a New Certificate of Title after Mortg. Foreclosure Sale U.S. Bank Nat’l Ass’n v. Traverse Pointe Ass’n*, No. A18-0008, 2018 WL 3716371, at *3 (Minn. Ct. App. Aug. 6, 2018); *Mortensen v. Swanson*, No A12-1314, 2013 WL 869940 (Minn. Ct. App. Mar. 11, 2013).

2. The Court finds that Long Lake’s reply declarations were timely and responsive to arguments raised by Orono. The only prejudice claimed by Orono was an inability to respond, which was remedied by the Court’s decision to hold the record open for Orono to submit its own reply declarations. Accordingly, Orono’s motion to strike is denied.

B. Contempt Motion

3. 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.

4. 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).

5. 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).

6. 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).

7. At the November 8th hearing, Orono argued that, should the Court find that there is sufficient evidence that Orono failed to comply with its prior Order, the Court must set an additional evidentiary hearing on the issue. Long Lake responded that the parties' written submissions and the November 8th hearing are sufficient under *Hopp* to find that Orono is in contempt. *Hopp*, 156 N.W.2d at 216.

8. The Court concludes that Long Lake has sufficiently proven violations of the July 14th Order enjoining recruitment by Orono of Long Lake firefighters and enjoining Orono from interfering with the FP Contract and Long Lake's use and operation of Fire Station 2 to support a finding of contempt. A further hearing will be required as to the hindrance issues.

9. The Court finds that Long Lake established, by a preponderance of the evidence, that Orono willfully disobeyed the Court's Order for Temporary Injunction by recruiting individual Long Lake firefighters to work for Orono. Defendant Orono is in constructive civil contempt. The July 14th Order clearly defined the action Orono must not take: Orono was enjoined from "recruiting Long Lake firefighters to begin working for the Orono Fire Department." Direct communications by Orono's fire chief to individual Long Lake firefighters, asking them to attend an Orono firefighter recruitment event, violated this injunction. Direct communications by Orono's mayor and fire chief to individual Long Lake firefighters seeking to pressure them not to obstruct Orono's recruitment efforts also violated this injunction. The Court finds that it is well within Orono's power to comply with the Court's July 14th Order, but it has failed to do so. Under Minnesota law, the Court has discretion to determine the amount of the fine required to induce compliance with its order. *State by Johnson v. Sports & Health Club, Inc.*, 392 N.W.2d at 336.

10. The Court finds that Long Lake established, by a preponderance of the evidence, that Orono willfully disobeyed the Court's Order for Temporary Injunction by taking concrete steps in planning to construct a building immediately adjacent to Fire Station 2 in early 2024, without consulting with Long Lake, informing Long Lake of the developing plans, or involving Long Lake in the planning process. The July 14th Order clearly defined the actions Orono must not take: Orono was enjoined from "using . . . 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" and from "directly or indirectly committing any violation of the Contract for Fire Protection," which gives Long Lake full authority over the operation of Fire Station 2. The Court finds that it is well within Orono's power to comply with the Court's July 14th Order, by consulting with Long Lake and involving Long Lake in the planning process as it relates to Fire Station 2, but it has failed to do so.

11. As to the remaining issues of whether Orono's hiring of multiple Long Lake firefighters and Orono's planned construction on the Fire Station 2 property violate the July 14th Order's injunction against "hindering" the LLFD, the Court will grant Orono's request for an additional evidentiary hearing.

ORDER

1. Plaintiff City of Long Lake's motion for an order to show cause and for a finding of constructive civil contempt is **GRANTED**.
2. Defendant City of Orono's motion to strike is **DENIED**.
3. Orono shall pay a fine of \$2,000 for each instance of any future contact for the purpose of recruitment in violation of the Court's July 14th Order, between any Orono City officials and any Long Lake firefighters, or 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.

4. Orono shall pay all costs and attorney's fees incurred by Long Lake in bringing its motion for an order to show cause and for a finding of constructive civil contempt.

5. Further violations of this Court's July 14th Order on Plaintiff's Motion for Temporary Relief or this Order for Contempt may result in issuance of a bench warrant or other contempt sanctions.

6. The Court hereby orders the Defendant City of Orono to show cause why it should not be held in contempt for hindering the LLFD in violation of the July 14th Order.

7. The parties shall appear before the Court for a hearing on a date to be scheduled either during the week of November 27, 2023 or on December 13, 2023 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. The Court's clerk will reach out to the parties to schedule the date and time for the hearing.

8. The parties are hereby directed to resume their mediation efforts as directed in the July 14th Order, within 30 days from the date of this order.

BY THE COURT:

Dated: November 21, 2023

Laurie J. Miller
Judge of District Court