

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
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BLANCA I. VÁZQUEZ-BURGOS,
NADIANET GUADALUPE-SANTOS,
MARGARITA RODRÍGUEZ-GRAU,
BLANCA I. OLIVO-MIRANDA, MARIA
M. RIVAS-MIRANDA, REBECCA
ORTIZ-ORTIZ, LUISA A. ACEVEDO-
RIVERA, NILSA A. MIRANDA-
ROSARIO, FELICITA RIVERA-CRUZ,
NANCY M. ORTIZ-LORENZANA,
MYRTA SERRANO-CRUZ, ALBA
FIGUEROA-OTERO, WANDA I.
VÁZQUEZ-BURGOS,

Plaintiffs,

v.

JUAN JOSE RODRÍGUEZ-PÉREZ,
REINALIZ MIRANDA-MONTES,
MUNICIPALITY OF CIALES,

Defendants.

Civil No. 13-1701 (JAF)

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5 **REINSTATEMENT ORDER**

6 This is a case about contract employees of a municipality whose transitory
7 employment contracts were continuously renewed over as many as eleven years. The
8 First Circuit is very familiar with the concept of transitory employees. These are
9 individuals who central and municipal governments hire disregarding the Puerto Rico
10 personnel laws that basically contemplate career employees and trust employees. It is a
11 local practice to contract transitory employees and they are renewed year after year.
12 They earn less and have no right to a pension or a proprietary interest in employment.
13 *See Cordero v. De Jesus-Mendez*, 867 F.2d 1, 18-20 (1st Cir. 1989).

14 The thirteen Plaintiffs previously worked for the municipality of Ciales – eleven in
15 the municipality’s Child Care Center program and two in the municipality’s Even Start

1 Program – where they served as child care providers, teacher’s aides, teachers, and
2 secretaries. These employees started with the programs from their inception. They were
3 the original employees appointed to newly-created contractual positions under the
4 auspices of the New Progressive Party mayor who had been in position in Ciales, Puerto
5 Rico, for about twenty years. Plaintiffs’ contractual appointments did not displace a
6 single person.

7 In 2013, a new governing party, the Popular Democratic Party, was elected by
8 some sixty votes, and Plaintiffs’ contracts were not renewed. Plaintiffs allege violations
9 of the First Amendment of the United States Constitution, by way of political
10 discrimination and retaliation, as well as violations of the laws and Constitution of the
11 Commonwealth of Puerto Rico. A jury returned a verdict in their favor finding for all
12 Plaintiffs and assessing back pay, compensatory damages, and punitive damages.

13 Plaintiffs’ demand included a request for equitable relief in the form of
14 reinstatement of Plaintiffs to their contractual positions with all corresponding benefits.
15 Upon the jury’s determination in Plaintiffs’ favor, the court turns now to the equitable
16 relief requested.

17 “Once a right and a [constitutional] violation have been shown, the scope of a
18 district court’s equitable powers to remedy past wrongs is broad, for breadth and
19 flexibility are inherent in equitable remedies.” *Swann v. Charlotte-Mecklenburg Bd. of*
20 *Educ.*, 402 U.S. 1, 15 (1971). The court may grant reinstatement as part of the equitable
21 remedies available for § 1983 violations. *Rosario-Torres v. Hernandez-Colon*, 889 F.2d

1 314, 321 (1st Cir. 1989) (en banc) (whether to reinstate a public employee fired in
2 violation of § 1983 is within the discretion of trial court).

3 Although a violation of First Amendment rights does not lead *a fortiori* to
4 reinstatement, reinstatement may be, and many times must be, a part of meaningful relief.
5 *Borges-Colon v. Roman-Abreu*, 438 F.3d 1, 20 (1st Cir. 2006). Reinstatement (or
6 “reappointment”) requires a “flexible application [that is] particularly desirable in cases
7 involving important private rights and public institutions such as those involving political
8 discrimination.” *Velazquez v. Figueroa-Gomez*, 996 F.2d 425, 428 (1st Cir. 1993). The
9 decision to reinstate is up to the district court’s discretion on “a case by case basis with a
10 keen eye to the many factors in the balance.” *Id.* The order is “reviewed for abuse of
11 discretion. Considerable deference is accorded a reinstatement order, as the district court
12 has had first-hand exposure to the litigants and the evidence and is in a considerably
13 better position to bring the scales into balance than an appellate tribunal.” *Hirald-*
14 *Cancel v. Aponte*, 925 F.2d 10, 13 (1st Cir. 1991) (internal quotations and citations
15 omitted).

16 The First Circuit has said that, “[a]mong the factors relevant to reinstatement
17 analysis are the following: (1) the strength of the evidence proving the first amendment
18 violation; (2) whether the discharged employee has found comparable work; [and] (3) the
19 absence of a property right in the position because the employee was hired in violation of
20 local law.” *Borges-Colon*, 438 F.3d at 20. Here, the record is crystal clear. All these
21 contractual employees were hired in strict compliance with municipal needs. There is no

1 evidence of any violation of local law in the hiring; in fact, Defendant did not even
2 attempt to establish illegality in the appointments.

3 “Routinely incidental burdens of reinstatement – for example, tension in the
4 workplace, or displacement of employees who had taken on duties previously handled by
5 the fired workers – are foreseeable sequelae of defendant’s wrongdoing, and usually
6 insufficient, without more, to tip the scales against reinstatement when first amendment
7 rights are at stake in a section 1983 action.” *Id.* Further, monetary damage awards do not
8 prevent a reinstatement order, because the benefits of work go beyond monetary benefits
9 to include psychological benefits. *Id.* The First Circuit has noted that reinstatement,
10 “even for a brief interlude, often affords ancillary benefit to the employee, such as
11 increased seniority, and enhanced eligibility for pension vesting, which do not obtain as
12 consequences of a traditional backpay award.” *Hiraldo-Cancel*, 925 F.2d at 13 (internal
13 quotations and citations omitted).

14 Here, we opt for immediate reinstatement of these thirteen employees who were
15 discriminated against in April 2013 and have suffered irreparable injury by the actions of
16 the Defendant mayor, who by his actions also bound the municipality. Since April 2013,
17 Plaintiffs have not been able to obtain employment in the high unemployment jurisdiction
18 of Ciales, Puerto Rico,¹ and have suffered severe damages of an economical and moral
19 nature. The actions by the mayor and of his municipality were taken with complete

¹ It is no secret that Puerto Rico’s unemployment rate is astonishingly high, ranging between 11.6% - 15% within the last 12 months (current figures report 12.4% unemployment), whereas the United States national unemployment rate is at 5.5%. (US Bureau of Labor Statistics at <http://www.bls.gov/eag/eag.pr.htm> and <http://www.bls.gov/eag/eag.us.htm> last visited 6/30/2015). In the center of the island, such as the Municipality of Ciales, unemployment spikes to levels around 23%. (<http://www.bls.gov/lau/laucnty14.txt> last visited 6/30/2015.)

1 disregard to basic legal principles. The discrimination was intentional, malicious, bold,
2 open, and imprudent. The actions by the Defendant were in complete disregard of
3 excellent employment records and the lack of work-related complaints. The mayor
4 destroyed the rights of these Plaintiffs and he utilized, as a co-participant, the services of
5 his campaign manager Eder Arocho, who is not employed by the municipality, to prepare
6 a list of thirteen persons of their own political affiliation to substitute these contract
7 employees in a federally-funded child care and educational program. It was brazen, raw,
8 and irresponsible discrimination based on account of political affiliation.

9 Prior to trial, the parties entered into two-hundred fifty-seven² stipulations which
10 alone establish, or very nearly establish, a prima-facie case of political discrimination and
11 Defendant's violation of Plaintiffs' First Amendment rights. After Plaintiffs had each
12 testified, confirming and further explaining the damaging stipulations, the only real
13 remaining issue for trial was whether the Defendant had neutral reasons to justify his
14 decision to not renew the Plaintiffs' employment contracts.

15 The evidence presented at trial, including Defendant's own evidence, was
16 devastating against the Defendant mayor. Ms. Blanca Ayala-Ramos,³ then Director of
17 Human Resources for the Municipality of Ciales, testified that she voiced her concerns to
18 Defendant about the Plaintiffs' contract non-renewals. Defendant assured Ms. Ayala-
19 Ramos that the contracts would be renewed and that the notices of non-renewal were

² Joint Ex. 15; Docket No. 207.

³ Originally named a defendant in this litigation, Plaintiffs called Ms. Ayala-Ramos to testify as an adverse witness under Fed. R. Evid. 611 during Plaintiffs' case-in-chief. At the conclusion of Plaintiffs' case-in-chief, the court dismissed the claims against Ms. Ayala-Ramos by entering Judgment as a matter of law in her favor. (See Docket No. 287.)

1 merely procedural. At the same time, Defendant's campaign manager was preparing a
2 list of people to substitute the terminated Plaintiffs. This list of new employees, which the
3 mayor intentionally endorsed, was comprised of persons who had taken an active role in
4 the mayor's campaign during the 2012 election. The rush to substitute the hand-picked
5 employees was of such a magnitude that the human resources files did not contain
6 essential information on the new contract hires – despite the fact that they would be
7 dealing directly with children. For example, the files did not contain negative
8 certifications from the Federal Sex Offender Registry, which also binds state
9 jurisdictions. Additionally, prior to beginning their employment at the Child Care Center
10 or the Even Start Program, the new hires were not subjected to testing for the use of
11 illegal drugs.

12 Upon learning that the notices of non-renewal were not merely procedural, and
13 that the Plaintiffs had in fact been terminated and replaced, Ms. Ayala-Ramos resigned.
14 Ms. Ayala-Ramos' resignation was directly related to her disagreement with how the
15 mayor had handled the non-renewal of Plaintiffs' employment contracts and hiring of
16 new employees to fill the positions.

17 Defendant also called Olga Chévere-Jiménez. Ms. Chévere-Jiménez was another
18 individual who assisted the mayor in preparing an informal dossier to justify removal of
19 the Plaintiffs from their positions. Specifically, she participated with the mayor on the
20 decisions for who should stay and who should be replaced. When called to testify on
21 behalf of the Defendant, Ms. Chévere-Jiménez refused to answer a single question. After

1 the administration of the oath, no direct examination was conducted and she was excused.
2 Defendant never re-called Ms. Chévere-Jiménez.

3 Finally, the Defendant, an educated civil engineer, professed being aware that it is
4 wrong to discriminate based on an employee's political affiliation. As much as he tried,
5 the mayor could not articulate any verifiable or substantial reason for the non-renewal of
6 Plaintiffs' employment contracts. The mayor's lack of a non-discriminatory reason was
7 most evident by the fact that before taking the personnel actions, he did not even glance
8 at the personnel records of the displaced employees – all of which had excellent
9 evaluations and no employment-related complaints. This court cannot in justice continue
10 to overlook these realities of the governmental workplace. This type of conduct is deeply
11 rooted and prevalent in Puerto Rico, and enough is enough. We have seen it occur year
12 after year and it is time to plainly denounce this abusive practice. It is entirely possible
13 that the First Circuit is the jurisdiction that has produced the most ample case law,
14 originating in Puerto Rico, during the last thirty years on account of these abuses. The
15 court finds that injunctive relief is necessary to prevent further irreparable injury.

16 Reinstatement, however, is not enough to make the Plaintiffs whole. As First
17 Circuit Court of Appeals Judge Juan Torruella recognized: “[r]einstatement in political
18 discharge cases is an ineffective remedy when unaccompanied by the payment of the
19 employee's lost wages or compensation for the damages suffered by him and his family.”
20 *Figueroa-Rodriguez v. Aquino*, 863 F.2d 1037, 1050 (1st Cir. 1988) (J. Torruella,
21 dissenting in part; concurring in part). “Reinstatement alone fails to provide an effective
22 deterrent to the recurrence of unconstitutional conduct by the public official.” *Id.* Back

1 pay is a valid element of a compensatory damage award under section 1983. *See*
2 *Acevedo-Garcia v. Monroig*, 351 F.3d 547, 568 (1st Cir. 2003). Making whole these
3 Plaintiffs with reinstatement and back pay using the power of injunction is the only way
4 to balance this injustice. *See Albemarle Paper Co. v. Moody*, 422 U.S. 405, 415-18
5 (1975) (emphasized the importance of make-whole relief for victims of discrimination);
6 *Local 28 of Sheet Metal Workers' Intern. Ass'n v. E.E.O.C.*, 478 U.S. 421, 446-47 (1986)
7 (District courts have broad discretion to determine appropriate equitable relief to
8 eradicate the effects of unlawful discrimination and to make whole the victims of past
9 discrimination.) (citations omitted).

10 At trial, Plaintiffs clearly met their burden of proof, not only by preponderance,
11 but by the great weight of the evidence. The two-hundred fifty-seven stipulations,
12 numerous exhibits, and strong testimony by the Plaintiffs themselves and the supposed
13 defense witnesses, all demonstrate that Defendant Mayor Juan Rodríguez-Pérez violated
14 Plaintiffs' constitutional rights when he failed to renew their employment contracts
15 because of their political affiliation. Additionally, the expeditious payment of the back
16 pay is necessary to prevent further damage to Plaintiffs. Should Plaintiffs be forced to
17 continue to wait to receive their back pay damages – an amount they would already have
18 received but for Defendant's discriminatory acts – the results would be devastating.
19 Plaintiffs have been unable to find other work in the depressed economy; they are
20 currently facing extreme financial hardships. Many of the Plaintiffs are months behind
21 on their mortgage payments, monthly bills, and facing bankruptcy. As the testimony
22 demonstrated, the longer the Plaintiffs go without restitution, the deeper into debt they

1 will fall. Simply put, not requiring payment of the back pay damages within thirty (30)
2 days would leave Plaintiffs without an effective remedy. This is a prime example of a
3 matter where “justice delayed is justice denied.” See *In re Atlantic Pipe Corp.*, 304 F.3d
4 135, 147 (1st Cir. 2002); Penn, William (1693), *Some Fruits of Solitude*, Headley, 1905,
5 p. 86. (“[T]o delay Justice is Injustice.”); *Albemarle Paper Co.*, 422 U.S. at 418 (internal
6 quotations and citations omitted) (“For it is the historic purpose of equity to secure
7 complete justice, [] Where federally protected rights have been invaded, it has been the
8 rule from the beginning that courts will be alert to adjust their remedies so as to grant the
9 necessary relief.”).

10 Here, the jury awarded back pay for each of the thirteen plaintiffs: Blanca
11 Vázquez Burgos: \$33,500.00; Nadianet Guadalupe Santos: \$33,500.00; Margarita
12 Rodríguez Grau: \$33,500.00; Blanca Olivo Miranda: \$42,590.00; Maria Rivas Miranda:
13 \$33,500.00; Luisa Acevedo Rivera: \$33,500.00; Rebecca Ortiz Ortiz: \$33,500.00;
14 Felícita Rivera Cruz: \$33,500.00; Alba Figueroa Otero: \$33,500.00; Nilsa Miranda
15 Rosario: \$33,500.00; Nancy Ortiz Lorenzana: \$33,500.00; Wanda Vázquez Burgos:
16 \$27,500.00; and Myrta Serrano Cruz: \$27,500.00.

17 Reinstatement and back pay will be ordered as part of the judgment.
18 Reinstatement of each of the thirteen plaintiffs into their previous positions must be
19 completed no later than ten (10) days from the entry of Judgment. Payment of the Back
20 Pay awards must be accomplished within thirty (30) days of the entry of Judgment.
21 Failure to timely reinstate Plaintiffs or remit the back pay awards may result in civil

1 contempt and all of its consequences including, if necessary, imprisonment under the
2 tenor of the civil contempt rules.

3 **IT IS SO ORDERED.**

4 San Juan, Puerto Rico, this 30th day of June, 2015.

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S/José Antonio Fusté
JOSE ANTONIO FUSTE
U. S. DISTRICT JUDGE