

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

BUTTE DIVISION

FILED

JAN 13 2016

**Clerk, U.S. District Court
District Of Montana
Helena**

AARON FRANK,

Plaintiff,

No. CV 15-26-BU-SEH

vs.

**MEMORANDUM AND
ORDER**

TOWN OF WEST YELLOWSTONE,
MONTANA; COLE PARKER, in his
individual and official capacity; JOHN
COSTELLO, in his individual and
official capacity; GREG FORSYTHE,
in his individual and official capacity;
and BRAD SCHMIER, in his
individual and official capacity,

Defendants.

INTRODUCTION

This case arises from the Amended Complaint and Demand for Jury Trial¹ of Plaintiff Aaron Frank (“Frank”) filed in this Court on June 23, 2015.

¹ Doc. 4.

On November 30, 2015, the Court held a hearing on Defendants' Motions to Dismiss by which Defendants Cole Parker, John Costello, Greg Forsythe, and Brad Schmier (the "Councilmen") and Defendant Town of West Yellowstone (the "Town") sought partial dismissal of Counts I, II, IV, V, VI, and IX against the Town and dismissal of all counts against the Councilmen.² Upon the record made in open court, the Court dismissed Counts I, II, III, IV, V, VI, and IX as to all Defendants. It also dismissed all claims against the Councilmen in their official and individual capacities. Ruling on Count VIII, Plaintiff's constructive discharge claim under the Wrongful Discharge from Employment Act ("WDEA"), as it related to the Town was taken under advisement. The parties were ordered to submit additional briefs on Count VIII which were filed December 4, 2015.³

DISCUSSION

The WDEA provides that it does not apply to a discharge "of an employee covered by a written collective bargaining agreement[.]"⁴ The Montana Supreme Court has interpreted this language to unequivocally state that the WDEA does not apply to an employee whose employment is governed by a collective bargaining agreement.⁵ At all times material, Frank was the member of the West

² Doc. 5.

³ Docs. 22 and 23.

⁴ Mont. Code Ann. § 39-2-912(2).

⁵ *Irving v. Sch. Dist. No. 1-1A, Valley Cnty.*, 813 P.2d 417, 422 (1991).

Yellowstone Police Protective Unit which had a collective bargaining agreement with the Town of West Yellowstone. His employment was governed by that agreement. The WDEA has no application to Frank's constructive discharge claim.

CONCLUSION


Count VIII should be dismissed.

ORDERED:

1. Defendant Town of West Yellowstone's Partial Motion to Dismiss⁶ as it relates to Count VIII is GRANTED.

2. On or before January 29, 2016, the parties are to apprise the Court as to whether the Court should proceed with establishing a preliminary pretrial schedule necessary for resolution of Plaintiff's sole remaining claim.

DATED this 13th day of January, 2016


SAM E. HADDON
United States District Judge

⁶ Doc. 5.