

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**VANESSA E. CARBONELL;
ROBERTO A. WHATTS OSORIO;
ELBA Y. COLÓN NERY;
BILLY NIEVES HERNÁNDEZ;
NÉLIDA ÁLVAREZ FEBUS;
LINDA DUMONT GUZMÁN;
SANDRA QUIÑONES PINTO;
YOMARYS ORTIZ GONZÁLEZ;
CARMEN BERLINGERI PABÓN;
MERAB ORTIZ RIVERA;
JANET CRUZ BERRIOS,**
individually and as representatives of the
requested class,

Plaintiffs,

v.

ANTONIO LÓPEZ FIGUEROA, in his
official capacity as Commissioner of the
Puerto Rico Police Bureau;
MICHELLE MOURE, in her official
capacity as Human Resources Director of the
Puerto Rico Police Bureau;
**UNION OF ORGANIZED CIVILIAN
EMPLOYEES,**

Defendants.

CIVIL NO. 22-1236 (WGY)

**Constitutional Violation Action (42 U.S.C.
§ 1983), Declaratory Judgment, Injunctive
Relief, Compensatory, Nominal, and
Punitive Damages. Jury Trial Demanded.**

**RESPONSE IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Come now, Plaintiffs Vanessa E. Carbonell (“Carbonell”), Roberto A. Whatts Osorio (“Whatts”), Elba Y. Colón Nery (“Colón”), Billy Nieves Hernández (“Nieves Hernández”), Nélida Álvarez Febus (“Álvarez”), Linda Dumont Guzmán (“Dumont”), Sandra Quiñones Pinto (“Quiñones”), Yomarys Ortiz González (“Ortiz González”), Carmen Berlingeri Pabón (“Berlingeri”), Merab Ortiz Rivera (“Ortiz Rivera”), and Janet Cruz Berrios (“Cruz”) (collectively,

“Plaintiffs”), on their own behalf and that of the class they seek to represent¹, through the undersigned counsel, and respectfully state and pray as, as follows:

I. Procedural Background

On January 19, 2024, Plaintiffs filed a Motion for Summary Judgment against Defendants Antonio López Figueroa (“López”) and Michelle Moure (“Moure”) in their official capacities as Commissioner and Human Resources Manager of the Puerto Rico Police Bureau (“PRPB”) (Dkt. 107). On March 13, 2024, López and Moure (collectively “Defendants”) filed a Response opposing Plaintiffs’ Motion for Summary Judgment, and filed their own motion for summary judgment (Dkt. 134). On March 27, 2024, Plaintiffs moved to strike Defendants’ motion for summary judgment on untimeliness grounds (Dkt. 137) and the court subsequently denied the motion (Dkt. 141). Plaintiffs, under Rule 56 of the Federal Rules of Civil Procedure and Civil Local Rule 56(c), respond to Defendants’ additional statements of uncontested material facts in support of their motion for summary judgment, as follows²:

II. Responses to the Defendants’ Additional Statements of Uncontested Material Facts (“ASUMF”)

1. ASUMF 1 is denied. As former head of human resources for PRPB, Jojanie Mulero (“Mulero”) received an email from Plaintiff Carbonell complaining about the reduction in her employer health insurance contribution. SUMF 87; Dkts. 107-28, 107-29. Defendants conceded this fact when they admitted to all of Plaintiffs’ Statements of Uncontested Material Facts. *See* Dkt. 134 at 4. Defendants’ characterization of Mulero’s deposition testimony, in contradiction of

¹ Plaintiffs filed a Motion to Certify Class on December 18, 2023. *See* Dkt. 104.

² Defendants’ arguments for summary judgment in their favor are indistinguishable from their arguments opposing summary judgment for Plaintiffs. *See* Defendants’ “Opposition to Plaintiffs’ Motion for Summary Judgment & Defendants’ Motion for Summary Judgment” at Sec. IV (Dkt. 134 at 5-11). Plaintiffs’ arguments for summary judgment in their favor are, therefore, incorporated by reference as arguments in opposition to Defendants’ motion for summary judgment. *See* Plaintiffs’ Memorandum in Support of Motion for Summary Judgment (Dkt. 107-1) and Plaintiffs’ Reply to Opposition to Motion for Summary Judgment (Dkt. 138).

the documentary evidence and their own prior admission, shows lack of candor and violates *Standing Order* 07-186 (JAF), *Code of Trial Conduct*, para. 22: Honesty, Candor and Fairness (“*The conduct of a lawyer before the court and with other lawyers should at all times be characterized by honesty, candor and fairness.*”)

2. ASUMF 2 is denied. López’s self-serving statement made during his deposition about his lack of power to modify the benefits of agency employees does not prove that the PRPB Commissioner in fact lacks the authority and power to remedy his agency’s discriminatory actions. This statement is belied by the uncontested fact that the PRPB adjusted employee benefits and that the Commissioner sets policy on the treatment of bureau employees in contradiction of the collective bargain agreement. SUMFs 84, 86, 91, 93, 96, 98, 101, 103, 106, 109, 111, 114, 117, 125, 128, 131, 134, 137, 139, 141, 144, 147, 150, 152, 153, 247. Defendants already admitted to those uncontested facts. *See* Dkt. 134 at 4.

3. ASUMF 3 is denied. The PRBP and the Union of Organized Civilian Employees (“the Union”), as parties to the Collective Bargaining Agreement, are able to modify the CBA and did so here by changing the terms or the application of the terms to Plaintiffs. SUMFs 84, 86, 91, 93, 96, 98, 101, 103, 106, 109, 111, 114, 117, 125, 128, 131, 134, 137, 139, 141, 144, 147, 150, 256, 217, 216, 212, 202, 162, 168, 172, 176, 180, 184, 187, 190, 158, 157, 153, 152, 65, 62. Defendants already admitted to those uncontested facts. *See* Dkt. 134 at 4.

4. ASUMF 4 is denied. If it were true that no one, *not even* the Secretary of Puerto Rico’s Department of Public Safety can authorize the changes to benefits that Plaintiffs saw, Plaintiffs would not have seen their health insurance contribution reduced after the Supreme Court’s decision in *Janus v. AFSCME* in 2018. SUMFs 84, 86, 91, 93, 96, 98, 101, 103, 106, 109, 111, 114, 117, 125, 128, 131, 134, 137, 139, 141, 144, 147, 150, 162, 168, 172, 176, 180, 184, 187, 190.

Defendants already admitted to those uncontested facts. *See* Dkt. 134 at 4. Moreover, PRPB Commissioner has the ability to make recommendations to the Secretary of the Department of Public Safety but declined to do so. SUMFs 255, 256.

5. ASUMF 5 is admitted.

6. ASUMF 6 is qualified. While the Commissioner issued some instructions on August 11, 2023 about dismissing bargaining unit members in the event of air conditioning failure, Plaintiff Dumont suffered discriminatory treatment because she was not affiliated with the union. SUMFs 226, 232-237. Defendants already admitted to those uncontested facts. *See* Dkt. 134 at 4.

WHEREFORE, the Court should deny Defendants' Motion for Summary Judgment and grant Plaintiffs' Motion for Summary Judgment against Defendants Antonio López Figueroa and Michelle Moure in their official capacities as Commissioner and Human Resources Manager of the Puerto Rico Police Bureau, respectively.

CERTIFICATE OF SERVICE

It is hereby certified that the undersigned attorney electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties and attorneys of record. It is further certified that the undersigned attorney served Defendant Union of Organized Civilian Employees via regular mail at: 78 Calle Padial, Caguas, PR 00725.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of April, 2024.

s/Ángel J. Valencia-Gatell

Ángel J. Valencia-Gatell

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