

The State of New Hampshire  
ROCKINGHAM  
SUPERIOR COURT

SUPERIOR COURT

ROCKINGHAM COUNTY

2003 FEB -3 A 9: 34 ( ) COURT  
(X) JURY

WRIT OF SUMMONS

WILLIAM BALDWIN  
82A Maple Avenue  
Atkinson, New Hampshire 03811  
v. Plaintiff

TOWN OF ATKINSON  
21 Academy Avenue  
Atkinson, New Hampshire 03811  
Defendant

The Sheriff or Deputy of any County is ordered to summon each defendant to file a written appearance with the Superior Court at the address listed below by the return day of this writ which is the first Tuesday of February, 2003.  
YEAR MONTH

The PLAINTIFF(S) state(s):

(Please see attached)

and the Plaintiff(s) claim(s) damages within the jurisdictional limits of this Court.

Mark A. Giarrusso  
INDORSER (sign and print name)  
Mark A. Giarrusso, Esquire

01-02-03  
DATE OF WRIT

NOTICE TO THE DEFENDANT

The Plaintiff listed above has begun legal action against you. You do not have to physically appear in Court on the return day listed above since there will be no hearing on that day. However, if you intend to contest this matter, you or your attorney must file a written appearance form with the Clerk's Office by that date. (Appearance forms may be obtained from the Clerk's Office.) You will then receive notice from the Court of all proceedings concerning this case. If you fail to file an appearance by the return day, judgment will be entered against you for a sum of money which you will then be obligated to pay.

Witness, WALTER L. MURPHY, Chief Justice, Superior Court.

Raymond W. Taylor  
Raymond W. Taylor, Clerk  
NH Superior Court Rockingham County  
10 Route 125  
Brentwood, NH  
Mailing Address:  
P.O. Box 1258  
Kingston, NH 03848-1258  
(603) 642-5256

Mark A. Giarrusso  
SIGNATURE OF PLAINTIFF/ATTORNEY  
Mark A. Giarrusso, Esq.  
Law Office of Mark A. Giarrusso  
114 Kenoza Avenue  
ADDRESS  
Haverhill, MA 01830 / 978-469-9400  
PHONE

2.

2003 FEB -3 A 9: 35

WILLIAM BALDWIN  
82A Maple Avenue  
Atkinson, New Hampshire 03811

v.

TOWN OF ATKINSON  
21 Academy Avenue  
Atkinson, New Hampshire 03811

**Declaration**

IN A PLEA OF ASSUMPSIT, for that the plaintiff WILLIAM BALDWIN (hereinafter referred to as "plaintiff") did provide satisfactory employment services as a police officer, Sergeant grade, pursuant to a written agreement dated August 16, 2001 with the defendant TOWN OF ATKINSON, NEW HAMPSHIRE (hereinafter referred to as "defendant") in consideration of the defendant's promise to pay therefore; said written agreement between plaintiff and defendant provided for merit pay increases to the plaintiff from the defendant, salary increases commensurate with any general pay increases generated by the labor organization certified to bargain collectively with the defendant, and tuition reimbursement to the plaintiff at a specified and agreed rate; the defendant has breached its obligations under the agreement with the plaintiff by failing to pay merit increases, general salary increases, tuition reimbursement, and has failed to honor its agreement to promote the plaintiff to the grade of Lieutenant; and the plaintiff has made proper demand for payment, yet the defendant, though repeatedly requested, has failed, neglected and refused to make payments as demanded and as due ALL TO THE DAMAGE OF THE PLAINTIFF in an amount sufficient to compensate the plaintiff for his losses, together with interest and costs, and within the jurisdictional limits of this Court.

**THE PLAINTIFF WILLIAM BALDWIN DEMANDS TRIAL BY JURY ON ALL CLAIMS AND ALL COUNTS.**

ROCKINGHAM, SS.

NO. \_\_\_\_\_  
ROCKINGHAM  
STATE OF NORTH CAROLINA  
SUPERIOR COURT

SUPERIOR COURT

2004 APR -1 A 10: 22 DOCKET NO. 03-C-0099

WILLIAM BALDWIN

V.

TOWN OF ATKINSON

**SUMMARY STATEMENT OF THE PLAINTIFF WILLIAM BALDWIN**

Now comes the plaintiff William Baldwin by and through his counsel Mark A. Giarrusso, Esquire, and submits before this Honorable Court the following Summary Statement pursuant to the Structuring Conference Order and for the scheduled conference scheduled for April 2, 2004 at 9:00 a.m.

1. Plaintiff is a full-time Sergeant (43 hours/week, plus overtime), with the Town of Atkinson Police Department. On or about August 16, 2001, the plaintiff was promoted to the position of Administrative Sergeant for the Atkinson Police Department, and pursuant to a written agreement, it was agreed by the Town and Sergeant Baldwin that effective August 27, 2001 that the plaintiff's salary would be raised to \$935.25 per week (on a 43 hour basis) and that Sergeant William Baldwin will then become a salaried employee, as opposed to a non-salary Union Member covering the rank and file police personnel.
2. Since Sergeant Baldwin was being promoted to a administrative position and becoming a salaried employee, he was no longer covered by the Collective Bargaining Agreement with the labor organization for protecting the rank and file union members, therefore, his own salary increases were to be governed by agreement with the Town.
3. In the subject August 16, 2001 agreement, the town agreed that Sergeant Baldwin would be granted a merit increase on January 1, 2002 in the range of 3% to 5% assuming continued satisfactory performance. The Town agreed with his continued satisfactory performance, and Sergeant Baldwin was given a 3% increase.
4. In addition, the Town agreed that any "union generated general increase" will result in a similar salary increase for Sergeant Baldwin, in addition to other non-covered police personnel. In April 2002, there was a union

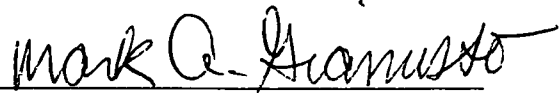
generated increase covering all union members in the Town of Atkinson Police Department, and the range of increase for the non-salary employees was between 1% to 31%. Sergeant William Baldwin received zero increase in April 2002.

5. The Town has made the averment that Sergeant received a merit increase in April 2003, however, from January 2003 through the end of February 2004, Sergeant William Baldwin was on active duty in the United States Military serving overseas in Kuwait. Therefore, he is unaware whether he did receive an increase in April 2003. When he began his active military service, the Town agreed to pay him the difference between his military salary and his Town salary. This was only a verbal agreement, which they did solely for what they considered a generous overture towards Sergeant Baldwin, however, after four months; the Town stopped making such payments. Sergeant Baldwin is aware of what his salary increase was in April 2003, because he will not begin Town of Atkinson pay until late April 2004.
6. This April 2004, all union members are expected to receive a 2.5% merit increase.
7. In addition, it was agreed in the August 16, 2001 contract with the Town of Atkinson that Sergeant William Baldwin "will be considered for the position of Lieutenant" during the year 2002 and if not promoted, that he would be considered for the Lieutenant position each successive year. Attached as Exhibit A is a letter from Vic Richards, Town Administrator, Town of Atkinson dated August 28, 2002 to Police Chief Constantino of the Atkinson Police Department stating that the Board of Selectman had a meeting on August 26, 2002 and discussed the written recommendation of Chief Constantino to promote Sergeant Baldwin the position of Lieutenant. As stated in the attached Exhibit, "the Board does not have plans to hire or select a Lieutenant in 2002". Plaintiff submits that this is in direct violation of the written agreement of August 16, 2001. At the very least, the Town should have considered promoting him to that position or at least entertaining a promotion in the year 2002 and each successive year. This was not done by the Town.
8. The plaintiff seeks contract damages for the defendant's failure to provide the plaintiff with his increase in April 2002, and awaits to see whether he did get an increase in 2003. Additionally, the plaintiff expects and demands a merit increase of 2 ½% in April 2004. Additionally, the plaintiff demands damages for the breach by the Town in not considering him for the position of Lieutenant when it agreed to do so by contract. The

consideration was the Sergeant taking over the administrative position of Sergeant when he had already served as Sergeant and commenced his second command an executive officer of the Town of Atkinson Police Department. In consideration of the plaintiff surrendering his rights to union generated contracts, the Town in turn agreed to consider him for promotion to Lieutenant and to continue such consideration for promotion for each successive year.

9. Plaintiff proposes the remainder discovery schedule. Disclosure of plaintiff's experts and written reports, July 1, 2004, alternative dispute resolution by August 2004, disclosure of defendant's experts and written reports September 1, 2004, close of discovery November 1, 2004, pretrial statements December 1, 2004, and trial no later than January 31, 2005. The plaintiff intends to take at least three depositions of the defendant, its administrators and elected officers. Written interrogatories and admission requests and document requests have already been submitted and responded to.

RESPECTFULLY SUBMITTED,  
Plaintiff, William Baldwin  
By his attorney,

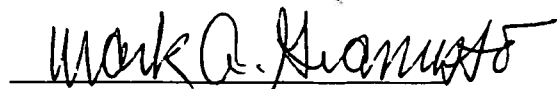


Mark A. Giarrusso, Esquire  
Law Office of Mark A. Giarrusso  
114 Kenoza Avenue  
Haverhill, MA 01830  
978-469-9400

Dated: March 31, 2004

#### CERTIFICATE OF SERVICE

I, Mark A. Giarrusso, hereby certify that a copy of the plaintiff's Summary Statement has been forwarded this day, March 31, 2004, to Charles P. Bauer, Esquire, counsel for the defendant.



Mark A. Giarrusso

**TOWN OF ATKINSON  
OFFICE OF THE SELECTMEN**  
21 ACADEMY AVE.  
ATKINSON, NH 03811  
TELEPHONE 603-362-5266

August 28, 2002

Police Chief Consentino  
Atkinson Police Department  
Atkinson, NH 03811

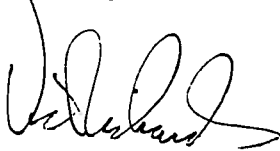
Dear Chief Consentino:

At the Board of Selectmen meeting Monday night, August 26, 2002, the Board discussed your recommendation to promote Sergeant Baldwin to Lieutenant.

The Board does not have plans to hire or select a Lieutenant in 2002.

Please advise Sergeant Baldwin of the Board's decision.

Sincerely,



Vic Richards  
Town Administrator  
Town of Atkinson