

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

TOWN OF WESTON

APRIL 15, 2010

-and-

LOCAL 866, COUNCIL 4,
AFSCME, AFL-CIO

Case No. MPP-27,485

A P P E A R A N C E S:

Attorney J. William Gagne, Jr.
For the Union

Attorney Courtney A. George
For the Town

RULING ON MOTION TO QUASH SUBPOENA

On September 19, 2008 AFSCME, Local 866 (Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Town of Weston (Town) had violated the §7-470(1), (a)(2) and (a)(3) of the Municipal Employee Relations Act (MERA or the Act) by interfering, restraining and coercing employees in the exercise of their rights and discharged and discriminated against an employee or employees for union activity in violation of the Act. Specifically in its complaint the Union alleges that on September 11, 2008 the Town recommended termination of the local Union president during contract negotiations in order to undermine and coerce the Union and its president in the exercise of their rights. (Ex. 4) On October 3, 2008 the Town filed an answer to the complaint generally denying the allegations of the complaint, but admitted that the Town had issued a notice of suspension to the Union President Oriana Rende (Rende) that included a recommendation for her dismissal from Town service. (Ex. 5) On August 27, 2009 the Union amended its complaint to include the fact that Rende had been terminated by the Town of October 2, 2008. (Ex. 6) On November 17, 2009 the Town filed an amended answer to admit that the Town had held a hearing on Rende's recommendation for termination on October 2, 2008 and had voted to terminate her on that date. (Ex. 7)

After the requisite preliminary administrative steps had been taken, the matter was scheduled for a formal hearing before the Labor Board on November 16, 2009. On November 9, 2009 the Union applied to the Labor Board for the issuance of a subpoena duces tecum pursuant to the Regulations of Connecticut State Agencies §7-471-51 directed to Thomas Landry (Landry) an employee of the Town. (Ex. 1) The subpoena was issued to the Union who arranged for appropriate service.

On November 12, 2009 the Town filed a Motion to Quash items #1, #2, #3, #5, #6 and #7 of the subpoena directed to it. (Ex. 2) The Town did not move to quash item #4 and indicated in its Motion that it would produce the requested documents in its possession that could be located in the Town's files. On December 14, 2009 the Union filed a Response to Motion to Quash. (Ex. 3)

On April 14, 2010, the Union and the Town appeared before the Labor Board on the Motion to Quash and the Response to the Motion to Quash. At that time, both parties were allowed to present argument and evidence concerning the subpoena duces tecum.

THE SUBPOENA DUCES TECUM

The items contained in the subpoena duces tecum directed to and served upon the Town that remain disputed or are at issue are:

1. All "Employee Data Calendars" of employees employed by the Town of Weston showing all vacation, sick, holiday for all current employees from July 1, 2002 until present.
2. "Employee Data Calendars" for the following ex-employees from July 2, 1002 [sic] to last date of employment: Michael Lieberman, Oriane Libby Rende, Sam Bailey, Sharyn Samuels, John Filush, Mark Bologna, Terry Mooney, Chuck Samuelson, Fred Moore, Cynthia Williams, Erwin Lambert, Helen Flores, Jean Owens, Nancy McCormick, Richard Palmiero, Tony Land, Diane Storck, Ronnie Parenteau.
3. All calculation worksheets, notes, working papers used to determine payout for unused vacation and sick pay to following ex-employees upon end of employment with Town. Also copies of ADP "Earnings Statement" for each employee detailing actual check issued for unused vacation and sick time: Michael Lieverman, Sam Bailey, Sharyn Samuels, John Filush, Mark Bologna, Terry Mooney, Chuck Samuelson, Fred Moore, Cynthia Williams, Erwin Lambert, Helen Flores, Jean Owens, Nancy McCormick, Richard Palmiero, Tony Land, Diane Storck, Ronnie Parenteau.
5. Copies of all "Town of Weston – Employee Record" sheets for all current employees from July 1, 2002 until present.

6. Copies of all “Town of Weston – Employee Record” sheets fro [sic] the following ex-employees from July 1, 2002 to last date of employment. Michael Lieberman, Oriane Libby Rende, Sam Bailey, Sharyn Samuels, John Filush, Mark Bologna, Terry Mooney, Chuck Samuelson, Fred Moore, Cynthia Williams, Erwin Lambert, Helen Flores, Jean Owens, Nancy McCormick, Richard Palmiero, Tony Land, Diane Storck, Ronnie Parenteau.
7. Completed time sheets and leave forms for the following employees – July 1, 2002 of hire until present: Lynn Stevens, Charlene Chiang-Hillman, Mark Harper.

POSITION OF THE PARTIES

Concerning items #1 and #2 the Town initially objected to the production of the documents on the grounds that the request was unduly burdensome because it required the Town to locate, review, copy and redact personal information in the documents for the seven year period covered by the requests. Further that the Union, if it wishes the documents produced should bear the cost. At the hearing the Town indicated that it had prepared the documents for production and that it was seeking to have the Union bear the cost of production. The Union argues that the documents are being requested from a party to the complaint and not a non-party and therefore the Union should not be required to bear the cost of production. The Motion to Quash is denied as to items #1 and #2 and we decline to order the Union to pay the cost associated with the Town’s production of these documents.

Concerning item #3 the Town objects to the production of the documents on the grounds that they are not relevant to any of the issues raised by the Union in its complaint because the Town did not discipline Rende on the basis of the calculation of amounts due to employees. Further that the request is overly broad, unduly burdensome and will require redaction of personal information. The Union argues that the documents are relevant to the Town’s claim that Rende authorized payment for herself and others that had not been earned. Further, that this is a claim of discrimination. The documents are related to the manner in which the payout of accumulated vacation and sick pay is determined.

The Town’s basis for terminating Rende included the “unilateral crediting of employee sick time in advance, rather than arrears, without supervisor approval, in violation of Town policy and practice” and therefore we find that it is relevant. The Labor Board further finds that the request is limited to seventeen (17) individuals and therefore is not unduly burdensome. The Motion to Quash as to item #3 is denied.

Concerning items #5 and #6 the Town objects to the production of these records on the grounds that they contained personal information, such as but not limited to phone numbers, addresses and social security numbers for current and former employees and further they are not relevant to the Union’s claims and is unduly burdensome because it requires the redaction of the personal information. The Town further requests that the

Union bear the cost of production. The Union argues that the documents are relevant to its claim to determine whether or not the status of any of the employees has changed. The Union objects to the request for it to bear the cost of production because the Town is a party to the action. Further, that it has no objection to the redaction of the records to remove personal information. After hearing the parties' arguments on the relevancy of the documents and the information contained therein, the Labor Board finds that the information contained in items #5 and #6 are duplicative of information that will be produced pursuant to items #1 and #2. The Motion to Quash items #5 and #6 is granted.

Concerning item #7 the Town objects to the production of these records on the grounds that the documents are not relevant to the Union's complaint. The Union argues that this information is relevant to determine the manner in which these employees were treated comparatively to Rende. After hearing the parties' arguments on the relevancy of the documents and the information contained therein, the Labor Board finds that the information contained in item #7 is duplicative of information that will be produced pursuant to items #1 and #2. The Motion to Quash item #7 is granted.

ORDER

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is hereby **ORDERED**:

1. The Motion to Quash filed by the Town is hereby **GRANTED** with respect to items #5, #6 and #7 and **DENIED** in all other respects.
2. The Town shall immediately produce to the Union documents satisfying items #1, #2 and #3.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John W. Moore, Jr.
John W. Moore, Jr.
Chairman

Patricia V. Low
Patricia V. Low
Board Member

Wendella Ault Battey
Wendella Ault Battey
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was faxed and mailed this 15th day of April, 2010 to the following:

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