

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
STATE OF CONNECTICUT
DEPARTMENT OF CORRECTION

DECISION NO. 3827

-and-

JUNE 4, 2001

LOCALS 387, 391 AND 1565,
COUNCIL 4, AFSCME, AFL-CIO

Case No. SPP-21,532

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

Attorney Ellen M. Carter
For the State

Attorney J. William Gagne, Jr.
For the Union

DECISION AND DISMISSAL OF COMPLAINT

On February 29, 2000, Locals 387, 391 and 1565, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint, amended on October 16, 2000, with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the State of Connecticut, Department of Correction (the State or DOC) had violated the State Employee Relations Act (the Act) by refusing to furnish the Union with copies of videotapes allegedly relevant to a pending grievance.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on October 23, 2000 at which both parties appeared and were represented by counsel. They were given full opportunity to present evidence, to examine and cross-examine witnesses and to make argument. Both parties filed post hearing briefs, the last of which was received on January 25, 2001.

Based upon the record before us, we make the following findings of fact and conclusions of law, and we dismiss the complaint.

FINDINGS OF FACT

1. DOC is an employer within the meaning of the Act.
2. The Union is an employee organization within the meaning of the Act.
3. DOC and the Union are parties to a collective bargaining agreement (Ex. 15) effective from July 1, 1994 through June 30, 2001.
4. On December 9, 1999, Correction Officer Lori Jones (Jones) was discharged for gross neglect of duty, specifically for “allowing an inmate who was confined to quarters (CTQ) to visit you and other inmates in their cells on several occasions.” (Ex. 2). The discharge was based on several video/audio tapes (the videotapes) recorded by regular surveillance cameras and a covert surveillance camera.
5. The Union filed a grievance (Ex. 14) on December 14, 1999 to protest the discharge. DOC played the videotapes at the first Step 3 meeting. After this meeting, Union Representative Albert Chiucarello (Chiucarello) sent DOC a letter (Ex. 3) requesting copies of “all video/audio and videotapes regarding the Lori Jones Dismissal case.”
6. By letter dated February 18, 2000 (Ex. 4), Principal Personnel Officer Manny Jainchill informed Chiucarello that DOC would not provide copies of the video/audio tapes for security reasons, but that it would “make arrangements for viewing and listening at either DOC headquarters or if necessary, at a facility which has the appropriate video and audio equipment.”
7. DOC refused to allow the Union to bring Jones to view the videotapes at the correctional facility from which she had been discharged, but was willing to allow them to view the tapes at another location.
8. The Union declined DOC’s offer to let it view the videotapes, insisting that DOC provide it with copies so that it could view them privately with Jones and with Union officials.
9. DOC issued a Step 3 answer (Ex. 14) on August 31, 2000 denying the grievance. The Union filed for arbitration which was pending at the time of the hearing.
10. On September 28, 2000, Chiucarello again requested copies of the videotapes, offering to pay the cost of copying. (Ex. 5).
11. DOC responded to this request on October 13, 2000, again refusing to provide the Union with copies of the videotapes, but reiterating its willingness to allow the Union as much time as it wished to view them.

12. The Union claimed that in the past, DOC had provided it with copies of videotapes, but could give no specific information on this subject.

13. DOC prepared a written summary of events depicted on the videotapes and gave the Union a copy of it. (Ex. 8).

14. The reasons DOC was willing to allow the Union to view the videotapes, but was unwilling to give it copies of them were its concern for security, the need to protect informants and privacy concerns for inmates. A detailed study of the videotapes could disclose the capabilities of the surveillance cameras, particularly the blind spots. The possibility exists that such a study could disclose the identity of informants or inmates incorrectly suspected of being informants. On occasion, surveillance videotapes have shown inmates in situations that should remain private. A study of these tapes could also disclose the identities of inmates who are imprisoned under false names for their own protection.

15. DOC has refused requests for copies of surveillance tapes made by the Commission on Human Rights and Opportunities and the Department of Children and Families. On one occasion, it did release copies under a Superior Court protective order.

CONCLUSIONS OF LAW

1. The duty to bargain in good faith includes the duty to furnish information relevant to a pending grievance.

2. Because of the valid reasons put forward by DOC for not releasing copies of the videotapes, DOC satisfied its duty to provide relevant information by allowing the Union the unlimited opportunity to view the videotapes even though DOC refused to give the Union copies of the videotapes.

DISCUSSION

The question presented is whether a party satisfies its obligation to provide information relevant to a grievance by allowing the other party to inspect that information, or whether it must furnish the other party a copy of the material sought.

The duty to bargain in good faith includes the duty to provide information relevant to a pending grievance. See *Connecticut State Board of Labor Relations v. West Hartford Board of Education*, 190 Conn. 235 (1983); *City of Bridgeport*, Decision No. 3127 (1993). There can be no question that the videotapes involved here are relevant to the grievance regarding Jones' discharge. In fact, these videotapes were the evidence upon which the decision to discharge Jones was based.

On numerous occasions, the Union demanded copies of the videotapes. On an equal number of occasions, DOC refused to provide copies. If DOC had gone no further than refusing to provide this information, we would find a violation of the Act. However,

DOC did not refuse to provide the information; it refused to provide the Union copies of the videotapes, a situation we find to be entirely different under these circumstances.

In response to the Union's request for copies of the videotapes, DOC offered the Union an unlimited opportunity to view them. DOC offered the facilities, the equipment and all the time the Union required to view the videotapes. Aside from furnishing copies of the videotapes, the only request DOC denied was for Jones' access to the facility from which she had been discharged. DOC was willing to allow her access to another of its facilities. Under the circumstances, we do not find this to be either unreasonable or improper.

The Union contends that it needed copies of the videotapes so that it could review them in detail with Jones and with Union officials. DOC's offer satisfied this need. DOC placed no restriction on who could view the tapes or on the amount of time the tapes could be viewed.

In our view, DOC raised legitimate security and other reasons for not providing the Union with copies of the videotapes. Of all the State agencies subject to the Act, DOC has some of the most unique and substantial security concerns. We have made it clear that we will not substitute our judgment or a union's judgment for that of DOC in matters of prison security. See *State of Connecticut, (Department of Correction)*, Decision 3014 B, at p. 9 (1993). We believe deference is due in our analysis of this issue. Providing copies of the tapes substantially increases the risk that the tapes may end up in the hands of someone not associated with the matter at hand.

A detailed review of the videotapes by someone having an interest in something other than Jones' activities could reveal the capabilities of the routine and covert surveillance systems, in particular, the blind spots. It is also possible that the identity of actual or suspected informants could be disclosed. The identity of inmates incarcerated under false identities for their own protection could be disclosed. Proper inmate privacy concerns could be compromised. It might be argued that allowing the Union to view the videotapes already compromised these interests. However, we believe that giving the Union copies of the videotapes would greatly increase the possibility of adversely affecting these interests.

The validity of the State's security concerns is reinforced by the existence of P.A. 99-156 which exempts from the disclosure requirements of the Freedom of Information Act records that DOC has reasonable grounds for believing may result in a security risk.

DOC has not compromised its policy of not providing copies of videotapes by releasing them to the Union or to other requesting agencies. Although the Union claimed that DOC had previously given it copies of similar tapes, it could produce no specific evidence of this. DOC has refused requests from the Commission on Human Rights and Opportunities and the Department of Children and Families for videotapes. The only time DOC did release a copy of a videotape was under the compulsion of a Superior Court order, and that was subject to a protective order enforceable by that court. We do

not view compliance with a court order to constitute a deviation by DOC from its policy of not releasing copies of videotapes.

Under the circumstances of this case, DOC satisfied its duty to provide information relevant to the Jones discharge grievance by allowing the Union the unrestricted opportunity to view the videotapes even though it refused to give the Union copies.

In spite of our decision in this case, we strongly note that, generally, the duty to bargain in good faith requires that a party be allowed to copy relevant information. We believe that a party will rarely satisfy its obligation to provide relevant information by allowing the other party only to inspect the material in question without providing a copy of it or at least bargaining about the costs and labor involved in copying materials. Our decision in the instant case is based upon the legitimate, substantial reasons DOC put forward for refusing to provide copies and the unlimited offer to inspect that it made. Whether the duty is satisfied by allowing only inspection will be decided on the basis of the facts in each case.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the State Employee Relations Act, it is hereby

ORDERED, that the complaint filed herein be, and it is hereby **DISMISSED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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John W. Moore, Jr.
Chairman

Patricia V. Low
Patricia V. Low
Board Member

David C. Anderson
David C. Anderson
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 4th day of June, 2001 to the following:

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