

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF  
BOROUGH OF NAUGATUCK  
POLICE COMMISSION AND  
CHIEF DENNIS CLISHAM

JANUARY 3, 2003

-and-

OFFICER RICK SMOLICZ

Case No. MPP-22,693

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

Attorney N. Warren Hess, III  
For the Borough

Attorney E. Stephen Briggs  
For the Complainant

Attorney Anthony Doran  
For the Union

**RULING ON MOTION TO DISMISS**

On November 19, 2002, the Borough of Naugatuck Police Commission and Police Chief Dennis Clisham (the Borough) filed a Motion to Dismiss the instant prohibited practice complaint filed by Officer Rick Smolicz (Smolicz or Complainant) on August 30, 2001. As a result of the Motion to Dismiss, the formal hearing in this matter, scheduled for December 3, 2002, was cancelled in order to allow the Complainant an opportunity to respond to the Motion. On December 10, 2002, the Complainant responded to the Motion. Although given an opportunity, CIPU (the Union), an interested party, did not respond to the Motion.

## DISCUSSION

### BACKGROUND

This case was initiated by Smolicz, an individual, in a complaint filed by his attorney alleging that the Borough had violated §§7-470(a)(1)(2)&(3) of the Municipal Employees Relations Act (MERA or the Act) by interfering, restraining and coercing Smolicz in the exercise of his statutory collective bargaining rights. At the time this complaint was filed in August, 2001, another complaint filed by the Union (MPP-22,000) was already pending concerning this officer which complaint alleges a violation of Smolicz's Weingarten rights. At all times, the Complainant, the Borough and the Union have been represented by Counsel.

Our review of the administrative record reveals the following. The parties met with Labor Board Agent David Johnson on November 6, 2001 to initiate the investigation of this complaint. The investigation was not completed on that date and was adjourned to January 11, 2002. By letter dated November 19, 2001, Assistant Agent Jose Santana informed the parties that Case No. MPP-22,000 would also be discussed on January 11, 2002. On January 10, 2002, Complainant filed an amended complaint in MPP-22,693. At the conference held on January 11, 2002, all parties appeared and participated and Complainant's attorney amended the caption of MPP-22,693 by handwriting corrections on the document. After discussing both MPP-22,693 and MPP-22,000, the parties agreed that Complainant's attorney would assume the representation of the Complainant in both MPP-22,000 and MPP-22,693 and would file an amended complaint consolidating the allegations of MPP-22,000 into MPP-22,693. At the conference, Complainant's attorney submitted a "Bench Memorandum" setting forth arguments regarding the allegations contained in both MPP-22,000 and MPP-22,693. On February 5, 2002, Complainant filed a complaint against the Union in Case No. MUPP-23,198, in which the Borough was also named as a respondent. The parties met again on March 27, 2002 at which time Complainant had yet to consolidate the allegations of MPP-22,000 and MPP-22,693. At that meeting, the parties agreed to a pre-trial date of September 4, 2002 and further agreed that Complainant would file the consolidated amended complaint in MPP-22,693 in the meantime. A pre-trial notice was mailed to all the parties on April 12, 2002 containing instructions for the pre-trial conference. On that same date, Assistant Agent Santana sent a letter to Complainant's attorney reminding him of his obligation to file an amended complaint. The pre-trial was held on September 4, 2002 at which time Complainant still had not filed an amended complaint. The parties agreed to a final pre-trial conference to be held in Naugatuck on November 19, 2002 and to formal hearing dates of December 3, 2002 and January 27, 2003. A notice of the final pre-trial conference was mailed by Assistant Agent Santana on September 6, 2002 indicating that the conference would take place on November 19, 2002 in Naugatuck. On November 19, 2002, Complainant's attorney failed to attend the conference stating that he believed the conference was to be held in Wethersfield and that he could not go to Naugatuck due to a conflicting arbitration hearing. On that date, the Borough submitted to the Assistant Agent certain pre-trial documents including a witness list and list of defenses. It also

submitted the instant Motion to Dismiss based on the conduct of the Complainant in the informal administrative proceedings. On the same date Complainant's attorney left a large number of untitled and unidentified documents in Assistant Agent Santana's office in Wethersfield. Upon the Assistant Agent's request to submit an amended complaint, Complainant's attorney faxed to the Borough the complaints in MPP-22,000, MPP-22,693 and MUPP-23,198 with certain deletions and additions. Assistant Agent Santana informed Complainant's attorney that the submission of documents in these forms was unacceptable.

### ARGUMENTS

The Borough argues that the complaint should be dismissed because the Complainant has failed on numerous occasions to cooperate with the instructions of the Assistant Agent and to abide by the agreements of the parties concerning filing an appropriate amended complaint setting forth the exact allegations that he wishes to pursue. The Borough claims that it cannot adequately respond or prepare a defense to the complaints when it is unsure what is being charged.

The Complainant argues that the complaint cannot be dismissed on those grounds and that the documents filed by him contain sufficient detail and accuracy to inform the Borough of the charges against it.

### CONCLUSION

The administrative information in this file clearly indicates that the Complainant's attorney has not participated in the pre-hearing process in the manner that can reasonably be expected of complaining parties. In this regard, it has been almost a year since the first indication that an accurate amended complaint would be filed. In spite of repeated requests for accurate documents, including at least one written reminder from the Assistant Agent, Complainant's attorney has yet to make an effort to comply with this simple and necessary step in the process.

In spite of the above-described actions, we are hesitant to punish the individual Complainant because of counsel's actions. Although we believe we do have the authority to dismiss a complaint if the moving party is uncooperative or fails to adequately pursue its claims, we are going to defer our decision on the Motion to Dismiss at this time. Instead, we will issue the following order, which we hope will finally accomplish the simple goal of readying this case to be heard by the Board. Any lack of cooperation with this order or with the further instructions of the Agent or Assistant Agent in this matter will be considered by the Board in the final analysis of the Motion to Dismiss. The Board will go forward with the hearing on January 27, 2003 and at that time will either hear the merits of this matter or will consider any alternative action based on evidence concerning the intervening actions of the parties.

## ORDER

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

1. The Complainant immediately file an amended complaint in Case No. 22-693 in a form acceptable to the Agent of this Board setting forth in an orderly manner and with sufficient particularity the allegations to be heard by the Board in a formal hearing on this matter.
2. The parties in this matter make themselves available for a pre-trial conference with the Assistant Agent assigned to this matter at a time prior to the next scheduled hearing date of January 27, 2003 for the purposes of:
  - A. Reviewing the amended complaint;
  - B. Exchanging documents pertaining to the presentation of evidence in this matter;
  - C. Attempting to agree upon stipulated evidence;
  - D. Any other matters as designated by the Assistant Agent.

### CONNECTICUT STATE BOARD OF LABOR RELATIONS

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

Wendella A. Battey  
Wendella A. Battey  
Board Member

Patricia V. Low  
Patricia V. Low  
Board Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing was sent via facsimile and certified and regular mail to the following:

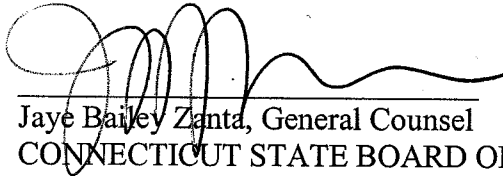
Attorney N. Warren Hess III  
42 Terrace Avenue  
P.O. Box 47  
Naugatuck, Connecticut 06770  
RRR

Attorney E. Stephen Briggs  
2 Hickory Hill Way  
West Granby, Connecticut 06090  
RRR

Attorney J. Anthony Doran  
CILU/CIPU  
36B Kreiger Lane, P.O. Box 938  
Glastonbury, Connecticut 06033  
RRR

Wayne A. Gilbert, Director  
CILU/CIPU  
36B Kreiger Lane, P.O. Box 938  
Glastonbury, Connecticut 06033

Cathy Granoth, Staff Representative  
CILU/CIPU  
36B Kreiger Lane, P.O. Box 938  
Glastonbury, Connecticut 06033

  
\_\_\_\_\_  
Jaye Bailey Zanta, General Counsel  
CONNECTICUT STATE BOARD OF LABOR RELATIONS