

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

STATE OF CONNECTICUT
JUDICIAL BRANCH

DECEMBER 30, 2019

-AND-

LOCAL 749 OF COUNCIL 4, AFSCME, AFL-CIO

Case No. SPP-33,648

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

Attorney Sean Hendricks
for the Union

Attorney Brian Clemow
for the State

RULING ON MOTION TO DISMISS

On April 24, 2019, Local 749, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint, amended on July 15, 2019, with the Connecticut State Board of Labor Relations (the Labor Board), alleging that the State of Connecticut, Judicial Branch (State or Judicial Branch) violated the State Employee Relations Act (SERA or the Act) by retaliating against Local 749 president Charles DellaRocca (DellaRocca) for engaging in protected activity by rejecting DellaRocca's applications for certain posted job positions.

After the requisite preliminary steps had been taken,¹ and in accordance with the Labor Board's regulations,² Labor Board Agent Katherine C. Foley (Foley) notified the

¹ On June 25, 2019, the complaint was the subject of an informal hearing with an assistant agent of the Labor Board. Both parties appeared, were represented by counsel, produced witnesses, and presented records in support of their respective positions.

² Regs., Conn. State Agencies § 5-273-26 states, in relevant part:

All complaints filed with the board shall be automatically referred to its agent who shall investigate the same ...

Regs., Conn. State Agencies § 5-273-27 states:

Within three (3) months of the date when the complaint was filed, the Agent shall report to the Board upon each complaint referred to him, recommending its dismissal or a hearing upon it. If the Agent recommends dismissal, he shall do so in writing and shall

Union by letter dated October 31, 2019 that she was recommending dismissal of the complaint, outlined the process for filing a written objection to her recommendation, and stated, in relevant part:

IF OBJECTIONS TO MY RECOMMENDATION ARE FILED, THE BOARD REQUESTS THAT OPPOSING PARTY(S) BE NOTIFIED. UNLESS WRITTEN OBJECTION IS FILED AS HEREIN PRESCRIBED, THE BOARD WILL DISMISS THE COMPLAINT.

Please note: Any written correspondence directed to this office, by any party to this case, must be copied and sent to all other parties.

(Emphasis in original).

By letter to Foley dated November 6, 2019, Union representative Jason Wells stated that the Union objected to Foley's recommendation and represented by the term "Cc" that copies of his said letter were sent to three State human resources representatives and State attorney Brian Clemow. By letter dated November 18, 2019, Foley notified the parties that the matter was scheduled for a formal hearing before the Labor Board on January 21, 2020. On November 27, 2019, at the State's request, the hearing date was postponed to February 13, 2020.

On December 4, 2019, the State filed a motion to dismiss contending that the Union failed to send copies of its objection to the Labor Board Agent's recommended dismissal to the State. On December 11, 2019, the Union filed a response to the State's motion.

DISCUSSION

The State argues that the Union failed to provide notice of its objection and as such, the objection was not timely filed as prescribed by the Labor Board in Foley's October 31 letter or in compliance with Section 5-273-49 of the Labor Board's regulations.³ The Union responds that it did copy the State and that State was not prejudiced in any event.

forthwith serve a copy of his recommendation upon all parties in interest. If any such party files a written objection to the Agent's recommendation of dismissal within fourteen (14) days of its service upon him, the Board shall order a hearing to be held upon the complaint. Unless such objection is so filed, the Board will dismiss the complaint.

³ Section 5-273-49 states, in relevant part:

All motions made, other than those made during a hearing or hearings, shall be filed in writing with the Board . . . The moving party shall serve copies of all such papers on all parties . . . All motions shall be decided by the Board upon the papers filed with it, unless the Board, in its discretion, shall decide to hear oral argument, or take testimony, in which event the Board shall notify the parties of such fact and of the time and place for such argument or for the taking of such testimony.

Based on the parties' submissions, and given the specific circumstances of this case, we find that the motion to dismiss should not be granted and that the case should proceed as scheduled.

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 Motion to Dismiss filed by the State in this case be, and the same hereby is, **DENIED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella Ault Battey
Wendella Ault Battey
Acting Chairman

Barbara J. Collins
Barbara J. Collins
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 30th day of December 2019, to the following:

Attorney Brian Clemow
Shipman & Goodwin, LLP
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Harry B. Elliott, Jr., General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS