

Commission on Human Rights and Opportunities ex rel. Holger Ocana	:	Commission on Human Rights and Opportunities
	:	
v.	:	CHRO No. 0630645
	:	EEOC No. 16aa601359
	:	
Metro-North Railroad Company	:	October 16, 2008

Ruling re: the respondent's motion to dismiss

On June 22, 2006, the complainant, Holger Ocana, filed an affidavit of illegal discriminatory practice (affidavit) with the commission on human rights and opportunities (commission) alleging that the respondent, Metro-North Railroad Company, violated General Statutes §§ 46a-58 (a) and 46a-60 (a) (1) and also Title VII and the Age Discrimination in Employment Act when it failed to promote him because of his age and national origin. The commission found reasonable cause to believe that an unfair practice was committed as alleged in the affidavit and, on June 16, 2008, certified the affidavit for public hearing. The respondent filed its post-certification answer on July 22, 2008 denying the allegations of discrimination.

On August 15, 2008, the respondent filed a motion to dismiss. The motion was re-filed on August 20, 2008 to include three exhibits referenced in, but inadvertently not included with, the August 15, 2008 filing. The respondent argued that it is a wholly-owned subsidiary of the Metropolitan Transportation Authority, organized under the laws of the State of New York. As a result of a compact between Connecticut and New York, codified in General Statutes §§ 16-343 and 16-344, the respondent operates a

commuter rail service in Connecticut and is exempted by Connecticut's legislature from state regulation, including exemption from Connecticut's anti-discrimination laws. The commission filed its objection on September 30, 2008.

Section 16-343 provides in relevant part: "The state of Connecticut hereby agrees with the state of New York, upon enactment by New York of legislation having the same effect as this section, to this compact for the purpose of providing for the continuation and improvement of essential interstate railroad passenger service" Article I of the compact authorizes the "Metropolitan Transportation Authority, a governmental corporation of the state of New York, and Connecticut Department of Transportation, an agency of the state of Connecticut" to engage in activities related to providing railroad passenger service. Article II further provides in part that: "The provisions of this compact shall be construed liberally to effectuate the purposes thereof."¹ Section § 16-344 (a) then provides that: "Mass transportation and railroad service operated pursuant to this compact shall be exempt from state regulation."

In *Greenwich v Connecticut Transportation Authority*, 166 Conn. 337, 341 (1974), the court was called upon to interpret "the term 'state regulation' as used in § 16-344." Applying the rules of statutory construction, examining the history of amendments to the statute and observing that, unlike its predecessor, § 16-344 contains no limitations on the exemption from state regulation, the court concluded that the exemption in § 16-344 went "beyond the narrow confines" of rates and schedules of service and included

exemption from the Environmental Protection Act of 1971. Id. 344-45. As the dissent noted, the majority’s interpretation “implies that statutes forbidding discrimination in employment do not apply to compact activities” Id., 349. (Bogdanski, J., dissenting). Thus, the dissent made the majority and the legislature fully aware of the implications, extent and application of the majority’s broad interpretation.

In this case, the respondent is in the business of providing mass transportation and railroad service pursuant to the Connecticut – New York compact and is the beneficiary of the exemption in § 16-344 (a). Its promotion of employees involved in its mass transportation and railroad service is within its routine and normal business operations. Based on the Connecticut Supreme Court’s decision in *Greenwich v Connecticut Transportation Authority*, the exemption in § 16-344 (a) applies to this case. Therefore, the commission lacks subject matter jurisdiction of this claim and the motion to dismiss is granted.

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

c:
Mr. Holger Ocana
Margaret Nurse-Goodison, Esq.
Frank Rinaldi, Esq.
Marc L. Zaken, Esq.

¹ Section 47 of number 05-210 of the 2005 Public Acts substituted “Connecticut Department of Transportation for “Connecticut Transportation Authority”.