

David M. Bathgate : Office of Public Hearings  
v. :  
Securitas Security Services, USA, Inc, et. al. : OPH/WBR 2011-159  
: June 21, 2011

Ruling re: the respondents' motion to dismiss for lack of subject matter jurisdiction

I

On April 13, 2011, David M. Bathgate, the complainant, filed a complaint with the chief human rights referee. Upon motion granted on May 10, 2011, he amended his complaint (amended complaint). In his amended complaint, Mr. Bathgate alleges that Securitas Security Services, USA, Inc. (Securitas), John Zotti and Diane Cote (collectively, the respondents) violated General Statutes § 4-61dd<sup>1</sup> when they retaliated against him for his disclosure of statutorily protected information. On May 23, 2011, the respondents filed their answer and defenses, denying that the personnel actions were retaliatory.

On June 10, 2011, the respondents filed a motion to dismiss the amended complaint (motion). Mr. Bathgate filed his objection on June 20, 2011. For the reasons set forth, the respondents' motion is denied.

## II

### A

In their motion, the respondents argue that this tribunal lacks subject matter jurisdiction. “Jurisdiction of the subject-matter is the power [of the tribunal] to hear and determine cases of the general class to which the proceedings in question belong.” (Internal quotation marks omitted.) *Dept. of Public Safety v. Freedom of Information Commission*, 103 Conn. App. 571, 576, cert. denied, 284 Conn. 930 (2007). In considering a motion to dismiss for lack of jurisdiction, the tribunal “must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” (Internal quotation marks omitted.) *Conboy v. State*, 292 Conn. 642, 651 (2009). Further, “[i]t is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged.” (Internal quotation marks omitted.) *Stepney Pond Estates, Ltd. v. Monroe*, 260 Conn. 406, 417 (2002)

### B

Subsections (a) and (b) of § 4-61dd prohibit, inter alia, a large state contractor from taking or threatening to take personnel action against an employee for that employee’s disclosure to the contracting state agency of corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public occurring

in a large state contract, generally referred to as “whistleblowing”. In the event that the large state contractor takes or threatens to take personnel action against the employee for the employee’s whistleblowing, the employee may file a complaint with the chief human rights referee. The chief human rights referee shall then assign the complaint to a human rights referee who shall conduct a hearing and issue a decision as to whether the personnel action taken or threatened was in retaliation for the employee’s whistleblowing.

Construing the pending complaint favorably to Mr. Bathgate, respondent Securitas is a large state contractor. Amended complaint, ¶ 6. Mr. Bathgate and respondents John Zotti and Diane Cote are employees of Securitas. Amended complaint, ¶¶ 1, 5. On November 22, 2010, January 21, 2011 and April 4, 2011, Mr. Bathgate disclosed to the contracting state agency, more specifically, to the dean of administration at Three Rivers Community College, information concerning the large state contract between Securitas and the state. Mr. Bathgate disclosed to the dean actions taken by Securitas regarding hiring and training that he believed violated the large state contract and that posed a threat to the public safety. Amended complaint, ¶ 8 and attachment A.

Following Mr. Bathgate’s whistleblowing to the dean, employees of Securitas took personnel actions against him. On March 16, 2011, Mr. Zotti issued him a counseling and corrective action report. On April 5, 2011, Ms. Cote issued him a disciplinary write-up. On April 8, 2011, Ms. Cote served him with notice of a three-day suspension, and the respondents also deleted his credit for on-line training he had completed. Finally, on

April 14, 2011, the respondents terminated his employment. Amended complaint, ¶ 9 and amended attachment B. Mr. Bathgate alleges that these are actions were in retaliation for his whistleblowing to the dean. Amended complaint, ¶ 9 (A).

Clearly, the allegations are within the scope of this tribunal's § 4-61dd statutory jurisdiction to adjudicate.

C

According to the respondents, this tribunal lacks subject matter jurisdiction because Mr. Bathgate's amended complaint fails to allege that the respondents were aware of his whistleblowing. Motion, 6-8. This argument relates not to the subject matter jurisdiction of this tribunal but rather to Mr. Bathgate's ability to meet his evidentiary burdens. Whether Mr. Bathgate can establish a prima facie case and prove retaliation is an evidentiary matter for the hearing.

---

Hon. Jon P. FitzGerald  
Presiding Human Rights Referee

C:  
Kathleen Eldergill, Esq.  
Russell N. Jarem, Esq.

---

<sup>1</sup> General Statutes § 4-61dd provides: "(a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority

---

or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section or for the purpose of investigating a suspected violation of subsection (a) of section 17b-301b until such time as the Attorney General files a civil action pursuant to section 17b-301c. Upon the conclusion of the investigation, the Attorney General shall where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. In addition to the exempt records provision of section 1-210, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section or sections 17b-301c to 17b-301g, inclusive, disclose the identity of such person without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.

“(b) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to (A) an employee of the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (B) an employee of the state agency or quasi-public agency where such state officer or employee is employed; (C) an employee of a state agency pursuant to a mandated reporter statute or pursuant to subsection (b) of section 17a-28; or (D) in the case of a large state contractor, an employee of the contracting state agency concerning information involving the large state contract.

---

“(2) If a state or quasi-public agency employee or an employee of a large state contractor alleges that a personnel action has been threatened or taken in violation of subdivision (1) of this subsection, the employee may notify the Attorney General, who shall investigate pursuant to subsection (a) of this section.

“(3) (A) Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183.

“(B) The Chief Human Rights Referee shall adopt regulations, in accordance with the provisions of chapter 54, establishing the procedure for filing complaints and noticing and conducting hearings under subparagraph (A) of this subdivision.

“(4) As an alternative to the provisions of subdivisions (2) and (3) of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract; or (B) an employee of a large state contractor alleging that such action has been threatened or taken may, after exhausting all available administrative remedies, bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

“(5) In any proceeding under subdivision (2), (3) or (4) of this subsection concerning

---

a personnel action taken or threatened against any state or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs not later than one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

“(6) If a state officer or employee, as defined in section 4-141, a quasi-public agency officer or employee, an officer or employee of a large state contractor or an appointing authority takes or threatens to take any action to impede, fail to renew or cancel a contract between a state agency and a large state contractor, or between a large state contractor and its subcontractor, in retaliation for the disclosure of information pursuant to subsection (a) of this section to any agency listed in subdivision (1) of this subsection, such affected agency, contractor or subcontractor may, not later than ninety days after learning of such action, threat or failure to renew, bring a civil action in the superior court for the judicial district of Hartford to recover damages, attorney's fees and costs.

“(c) Any employee of a state or quasi-public agency or large state contractor, who is found to have knowingly and maliciously made false charges under subsection (a) of this section, shall be subject to disciplinary action by such employee's appointing authority up to and including dismissal. In the case of a state or quasi-public agency employee, such action shall be subject to appeal to the Employees' Review Board in accordance with section 5-202, or in the case of state or quasi-public agency employees included in collective bargaining contracts, the procedure provided by such contracts.

“(d) On or before September first, annually, the Auditors of Public Accounts shall submit to the clerk of each house of the General Assembly a report indicating the number of matters for which facts and information were transmitted to the auditors pursuant to this section during the preceding state fiscal year and the disposition of each such matter.

“(e) Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section, the contractor shall be liable for a civil penalty of not more than five thousand dollars for

---

each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

“(f) Each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

“(g) No person who, in good faith, discloses information to the Auditors of Public Accounts or the Attorney General in accordance with this section shall be liable for any civil damages resulting from such good faith disclosure.

“(h) As used in this section:

(1) ‘Large state contract’ means a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more; and

(2) ‘Large state contractor’ means an entity that has entered into a large state contract with a state or quasi-public agency.”