

**STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
OFFICE OF PUBLIC HEARINGS**

Sandra Lueder : OPH/WBR No. 2005-011

v.

Shyam Lodha and Southern Connecticut : August 7, 2006  
State University

**FINAL DECISION**

*Preliminary Statement*

On September 26, 2005, Dr. Sandra Lueder (“complainant”) filed a whistleblower retaliation complaint with the chief human rights referee pursuant to General Statutes § 4-61dd (b). In her complaint, she alleged that respondent Dr. Shyam Lodha (“Lodha”), chairman of Southern Connecticut State University’s (“SCSU”) marketing department, had retaliated against her in violation of General Statutes § 4-61dd by refusing to hire her as an adjunct professor for the 2005 summer session, the 2005 fall semester and, she anticipated, the 2006 spring semester. She alleged that his refusal to hire her was in retaliation for her disclosure of information to SCSU’s administration on March 19, 2002 regarding his management and budgetary practices.

The public hearing was held on April 25, 2006 and May 3, 2006. Briefs were filed on July 14, 2006, at which time the record closed.

For the reasons stated herein, the complaint is dismissed.

### *Findings*

References to an exhibit are by party designation and number. The complainant's exhibits are denoted as "C" followed by the exhibit number and the respondent's exhibits are denoted as "R" followed by the exhibit number. References to the transcript are designated as "Tr." followed by the page number. The record also includes the complaint, answer and amendments thereto; pleadings; motions; intermediate rulings and the parties' briefs. General Statutes § 4-177 (d); Regs., Conn. State Agencies § 4-61dd-21.

The facts, legislative history and procedural history relevant to this decision are:

1. SCSU hired the complainant as a professor in August 1981. Tr. 258; C-1; Complaint, section 6.
2. On March 19, 2002, the complainant, an associate professor in the marketing department of SCSU's School of Business, disclosed information to SCSU's president, vice presidents and dean and to the marketing department's personnel committee regarding what she believed to be improper management and

budgetary practices by Lodha, chairman of the marketing department. Tr. 448; C-21; Complaint, section 7.

3. The complainant never disclosed this information to the auditors of public accounts (“public auditors”) or the attorney general. Tr. 448-450.
4. In 2002, the General Assembly enacted and the governor signed Public Acts 2002, No. 02-91 with an effective date of June 3, 2002.
5. The complainant retired from SCSU in May 2003. Tr. 285-86.
6. Thereafter, the complainant contacted Lodha to express her interest in being hired as an adjunct professor to teach a course in the marketing department for the 2005 summer session. Tr. 298.
7. The complainant was not hired for a teaching position for the 2005 summer session. Tr. 298; C-22.
8. On June 14, 2005, the complainant contacted Lodha to express her interest in being hired as an adjunct professor to teach a course in the marketing department for the 2005 fall semester. C-9.
9. In 2005, the General Assembly enacted and the governor signed Public Acts 2005, No. 05-287 with an effective date of July 13, 2005.
10. On August 29, 2005, the complainant was notified that she had not been hired for an adjunct position for the 2005 fall semester. Complaint, section 8.
11. On September 26, 2005, the complainant filed her whistleblower retaliation complaint with the chief human rights referee alleging that Lodha’s failure to hire

her as an adjunct was in retaliation for her March 19, 2002 disclosure to SCSU's administration of information about his management and budgetary practices. Complaint.

12. The complainant's motion to amend her complaint to add SCSU as a respondent was granted on November 3, 2005. Complainant's motion to amend, dated October 20, 2005; Order, dated November 3, 2005.

13. On March 1, 2006, the complainant's motion was granted to amend her complaint to include allegations that the respondents' failure to hire her as an adjunct for the 2006 spring semester was also in retaliation for her disclosure of information about Lodha. Complainant's motion to amend dated February 21, 2006; Ruling re: complainant's motion to amend and respondent's motion for continuance dated March 1, 2006.

### ***Analysis***

#### I

The respondent argues that the human rights referees do not have jurisdiction of this complaint because (1) the complainant disclosed information about Lodha prior to the enactment of statute designating the human rights referees as a venue for whistleblower retaliation complaints and (2) the complainant did not disclose the information to the public auditors or the attorney general. (Respondent's post-hearing

brief, pp. 2-3.) To determine whether the human rights referees have jurisdiction of this complaint requires revisiting the retrospective and prospective application of P.A. 02-91 and P.A. 05-287.<sup>1</sup>

## II

### A

Whether to apply P.A. 02-91 and P.A. 05-287 retrospectively or prospectively to their enactment depends on whether they are procedural or substantive law and on the legislative intent in enacting them.

“In order to determine the legislative intent, we utilize well established rules of statutory construction. Our point of departure is General Statutes § 55-3, which states: No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have retrospective effect. The obligations referred to in the statute are those of substantive law. . . . Thus, we have uniformly interpreted § 55-3 as a rule of presumed legislative intent that statutes affecting substantive rights shall apply prospectively only.” (Citations omitted; internal quotation marks omitted.) *D’Eramo v. Smith*, 273 Conn. 610, 620-21 (2005). “Legislation which limits or increases statutory

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<sup>1</sup> See *Paul Cayer v. Western Connecticut State University*, OPH/WBR No. 2003-001, Order re: Motion to Dismiss or to limit the plaintiff’s claim (December 12, 2003) (P.A. 02-91 to be applied retrospectively) and *Paul Cayer v. Western Connecticut State University*, OPH/WBR 2003-001, Ruling re: Respondent’s motion in limine (September 21, 2005) (P.A. 05-287 to be applied prospectively).

liability has generally been held to be substantive in nature;” (citation omitted; internal quotation marks omitted) *Maretz v. 595 Corporate Circle*, 56 Conn. App. 815, 823 (2000); and, presumptively, is to be applied prospectively. “The legislature only rebuts this presumption when it clearly and unequivocally expresses its intent that the legislation shall apply retrospectively;” (citation omitted; internal quotation marks omitted) *Id.*, 823-24; or “when a legislative act is intended to clarify existing law.” *Reid v. Zoning Board of Appeals of the Town of Lebanon*, 235 Conn. 850, 859 n. 5 (1996).

“The rule of presumed legislative intent is not, however, applied to legislation that is general in its terms, affects only matters of procedure and does not impose new obligations or affect the substantive rights of the parties. . . . Where the amendment is not substantive, i.e., not directed to the right itself, but rather to the remedy, it is generally considered a distinctly procedural matter.” *Davis v. Forman School*, 54 Conn. App. 841, 854-55 (1999). “In civil cases . . . unless considerations of good sense and justice dictate otherwise, it is presumed that procedural statutes will be applied retrospectively. . . . Procedural statutes have been traditionally viewed as affecting remedies, not substantive rights, and therefore leave the preexisting scheme intact.” (Citations omitted; internal quotation marks omitted.) *D’Eramo v. Smith*, *supra*, 273 Conn. 621. “While there is no precise definition of either [substantive or procedural law], it is generally agreed that a substantive law creates, defines and regulates rights while a procedural law prescribes the methods of enforcing such rights or obtaining redress.” (Citations omitted; internal quotation marks omitted.) *Davis v. Forman School*, *supra*, 54

Conn. App. 854-55. “[I]n the absence of any expressed [legislative] intent to the contrary, procedural statutes ordinarily apply retroactively to all actions, whether pending or not, at the time the statute became effective.” Id., 857. A procedural mechanism for enforcing a preexisting right is a procedural law and not a substantive law. Id., 856.

## B

Applying these criteria, it is evident that the designation by P.A. 02-91 of the human rights referees as a venue for the filing of whistleblower retaliation complaints is a procedural matter that can be applied retrospectively.

Prior to P.A. 02-91, under § 4-61dd (a) a state employee could transmit to the public auditors information “involving corruption, unethical practices, violations of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring” in her agency. Upon receipt of such information, the public auditors would review the matter and report their findings and recommendations to the attorney general, who would conduct an appropriate investigation. State agencies were prohibited from taking or threatening to take personnel action against the employee (“whistleblower”) who had disclosed information to the public auditors or the attorney general. If the whistleblower believed that a personnel action had been threatened or taken against her in retaliation for the

disclosure, she could file an appeal with the Employees' Review Board or, if covered by a collective bargaining contract, in accordance with the provisions of the contract. § 4-61dd (b) (2001).

Public Act 02-91 did not change the type of information an employee could disclose to be protected from retaliation. It did not change the entities to whom the employee could disclose such information to be protected from retaliation. It did not change the prohibition against agencies retaliating against whistleblowers. It did not preclude the whistleblower from filing a complaint with the Employees' Review Board or in accordance with an applicable collective bargaining agreement. In other words, the preexisting scheme remained intact.

Rather, P.A. 02-91 simply added the human rights referees as a procedural mechanism to provide an additional remedial forum where a whistleblower could enforce her preexisting rights to be free from retaliation for disclosures made to the public auditors and the attorney general and to obtain redress from retaliatory acts for such disclosures. The inclusion of the human rights referees imposed no new obligations or liabilities on either the employee or the state agency. Therefore, P.A. 02-91's inclusion of human rights referees to adjudicate whistleblower retaliation complaints is a procedural matter that can be applied retrospectively, and the human rights referees have jurisdiction of whistleblower retaliation complaints even if the disclosure of information to the public auditors or attorney general occurred prior to the effective date of the act.



## C

However, when applying the retrospective and prospective criteria to P.A. 05-287, it is evident that the employee's protection against retaliation for disclosing information to other agency employees (often referred to as an internal whistleblower complaint) is a matter of substantive law to be applied prospectively.

Prior to P.A. 05-287, § 4-61dd prohibited a state agency from retaliating against an employee who disclosed to the public auditors or the attorney general information "involving corruption, unethical practices, violations of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring" in her agency. Section 4-61dd, though, contained no statutory provision preventing an agency from retaliating against an employee who made an internal whistleblower complaint.

Among other statutory changes, § 47 (b) (1) of P.A. 05-287 amended § 4-61dd to provide a statutory prohibition against state agencies retaliating against employees who made internal whistleblower complaints. This created a new right for employees to be free of retaliation for internal whistleblower complaints and, conversely, imposed a new obligation on state agencies not to retaliate for internal whistleblower complaints, thereby creating new and increased liability on the agency if it does retaliate. Also, nothing in § 47 compels a retrospective construction and nothing in its legislative history indicates that the legislature clearly and unequivocally intended it to apply

retrospectively. Further, there is no indication that the legislature was merely clarifying the then-existing law under § 4-61dd.

### ***Conclusions of law***

1. The inclusion, under P.A. 02-91, of the human rights referees as an additional venue to adjudicate whistleblower retaliation complaints is procedural rather than substantive legislation and may be applied retrospectively. Therefore, the human rights referees have jurisdiction to adjudicate whistleblower retaliation complaints arising from disclosures of information made to the public auditors or the attorney general pursuant to § 4-61dd (a), even if those disclosures occurred prior to June 3, 2002 (the effective date of P.A. 02-91).
2. The prohibition, under P. A. 05-287, that a state agency may not retaliate against an employee who discloses information to the agency in which the employee is employed is substantive legislation to be applied prospectively. Therefore, human rights referees have jurisdiction to adjudicate whistleblower retaliation complaints arising from such internal disclosure provided that both the disclosure and the retaliatory act occurred after July 13, 2005 (the effective date of P. A. 05-287).
3. The human rights referees do not have jurisdiction to adjudicate this complaint because the complainant did not make her disclosure of information to the public

auditors or the attorney general and because her disclosure of information to SCSU's administration occurred prior to July 13, 2005.

**Order**

The complaint is dismissed.

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Hon. Jon P. FitzGerald  
Presiding Human Rights Referee

c:  
Dr. Sandra Lueder  
Norman A. Pattis, Esq.  
Dr. Shyam Lodha  
Dr. Cheryl Norton  
Joseph A. Jordano, Esq.