

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

Commission on Human Rights and
Opportunities ex rel. Donald J. Rajtar,
Complainant
v.

CHRO No. 0510115
Fed No. 16aa402033

Town of Bloomfield,
Respondent

October 3, 2007

Ruling on Motion to Dismiss

This matter was initiated on or about September 16, 2004 when the complainant, Donald J. Rajtar, filed a complaint with the Commission on Human Rights and Opportunities (commission) claiming wrongful termination from his position as a patrol officer with the police department of the respondent, Town of Bloomfield, on March 18, 2004 because of his age in violation of General Statutes §§ 46a-60 (a) (1), and the Age Discrimination in Employment Act of 1967 (ADEA).

The respondent filed a motion to dismiss on February 15, 2007, shortly before the scheduled public hearing on this matter was to commence. On said date the respondent also filed a motion to stay and on February 20, 2007 all parties filed a joint motion to stay. The aforementioned motions were predicated upon a superior court ruling in *Town of Bloomfield v. United Electrical Radio & Machine Workers of America*, 2006 WL 3491719 (Conn. Super) upholding in part and setting aside in part, an arbitration award (Case No.: 2004-A-1002) wherein the panel of arbitrators had found that while the complainant had been untruthful during his internal affairs investigation and before the arbitration panel as well, his termination amounted to disparate

treatment in that two of respondents other officers had faced only suspensions for similar offenses.

The panel reinstated the complainant and reduced his termination to a two hundred workday suspension. The respondent made an application to the superior court to vacate the arbitration award, the principal basis for the application being that reinstatement of the complainant (an officer who had lied) would constitute a violation of public policy. The court (Rittenband, J.T.R.) granted the application and concluded that the record substantiated that there was substantial evidence that the complainant did lie in the performance of his duties and that the arbitration panel had violated public policy in reinstating the complainant. As recited in the aforementioned joint motion to stay, the superior court ruling was appealed, initially to the Connecticut Appellate Court, and by information and belief is still awaiting final appellate review.

On February 21, 2007 the motions to stay were denied. On February 27, 2007, the decision on the motion to dismiss was reserved until the conclusion of the scheduled public hearing and the filing of briefs, with the understanding that the hearing and briefs could address issues of preclusion. A six-day public hearing was held and conducted in March of 2007 at commission headquarters in Hartford and briefs were filed, portions touching upon the merits of the respondent's instant motion to dismiss.

The respondent's motion asserts that the superior court judgment precludes the issue of whether the respondent had a legitimate, non-discriminatory reason for terminating the

complainant and whether the reasons were pretextual. It correctly concludes that were it so it would then follow that since the complainant's claims are age based, further litigation would be precluded through a strict application of *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). This is so because the "curative" effects of the Civil Rights Act of 1991 are unavailing to complainant's seeking redress under CFEPA and the ADEA.

The respondent relies heavily on *Commission on Human Rights and Opportunities ex rel. Joyce Sperow v. Regional School District No. 7*, CHRO No. 0130607 (December 1, 2005). This commission decision found a superior court approval of a teacher termination effectuated pursuant to General Statutes § 10-151, wherein the teacher was found to be unqualified to continue to perform her duties, to effectively preclude further consideration by the commission of her discrimination claims.

Despite a very able marshalling and presentation of its claims, the respondent requests in effect that I disregard the plain language that our state legislature employed in General Statutes §§ 46a-85(b) and 31-55bb, in which it clearly provided that the commission's presiding officer is to give only such weight to an arbitration panel decision as may be deemed appropriate. Upon a review of the arbitration decision and having heard certain testimony relating thereto at the March 2007 public hearing (Rajtar hearing), I find that the arbitration panel decision does not preclude my right or ability to make findings based upon the evidence and testimony presented at the Rajtar hearing

and the briefs filed after its conclusion. While this may at first blush appear contrary to my holding in the *Sperow* matter, upon further review I submit that it is not.

- In *Sperow* great emphasis was placed on the legislature's entrusting to what was therein referred to as the "Section 151 Process", great deference as the default venue wherein teacher competence could be expertly and expeditiously considered.
- In *Sperow* the terminated teacher sought judicial review of the termination. This complainant (Rajtar) did not.
- In *Sperow* the panel was dealing with facts that were largely uncontroverted and focused primarily on the discipline appropriate to the largely undisputed conduct.
- In *Sperow* there was a transcript (at my disposal) of the full proceedings of the Section 151 panel, while in this matter there was not.
- In the Rajtar hearing the facts were very much in dispute and the panel predicated its findings to a significant degree on which witnesses it believed had a motive to lie, without ever considering the effect age discrimination and its related animus might have played as a motive for various witnesses and/or decision makers, either in their direct actions or in the condoning of the actions of others. While Rajtar may have made no attempt to introduce such evidence (as was done here, before the commission), under the explicit protection of General Statutes § 46a-85 (b) he had (unlike *Sperow*) no such obligation to do so.
- If our judicial appellate process were ultimately to reinstate the Rajtar arbitration decision, would the decision then be given preclusive weight, free of the

limitations of General Statutes § 46a-85 (b)? I can find no authority to that effect, or to the effect that subsequent court action on an arbitration decision frees that decision from the limitations placed upon it by statute.

Ultimately I conclude that the motion mixes “apples with oranges.” Judicial review is now in the process of grappling with whether it is against public policy to reinstate a police officer who has been found to have lied. I am being asked by the complainant to determine if the respondent’s claims that he lied are pretextual in nature and have been advanced to justify a termination that is based on unlawful discrimination on the basis of age. I should clarify that as a fact finder my concern with the arbitration decision and its subsequent review is initially only with the weight I should award to the findings of fact made therein. The fact that the remedy the panel ordered was found by the superior court to be unlawful as a matter of public policy is another matter entirely, and one I would need to consider in the event I also find it to be established that the complainant lied in the performance of his duties.

As the commission is rightly wont to say, it is the country’s first state civil rights watchdog agency and the vehicle to implement our state’s “firm commitment... to do away with...discrimination altogether.” *Evening Sentinel v. NOW*, 168 Conn. 26, 34 (1975). While I do not always agree (as in *Sperow*) that this grant of jurisdiction allows it to always “trump” the jurisdiction of all competing judicial venues, when presented with something as plainly written as General Statutes § 46a-85 (b), I feel constrained to make such a finding here.

For the above reasons the respondent's motion to dismiss is DENIED.

It is so ordered this 3rd day of October 2007.

J. Allen Kerr, Jr.
Presiding Human Rights Referee

cc.

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