Stephen J. Samson	: Office of Public Hearings
	:
v.	: OPH/WBR No. 2010-134
	:
CT State Police	: June 28, 2010

Ruling re: the respondent's second motion to strike

On June 9, 2010, the respondent filed its second motion to strike the complaint for failing to state a claim upon which relief can be granted (motion). For the reasons set forth herein, the motion is denied.

I

On April 13, 2010, the complainant filed a complaint with the chief human rights referee pursuant to General Statutes § 4-61dd. The respondent moves to strike the complaint pursuant to section 4-61dd-15 (d) of the Regulations of Connecticut State Agencies, which provides in relevant part that: "Whenever a respondent alleges that the complaint fails to state a claim for which relief can be granted, the respondent may file a motion to strike. The motion shall be accompanied by a memorandum of law citing the legal authorities relied on and shall distinctly specify the reason or reasons for the claimed insufficiency."

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted. . . [I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . It is fundamental that in determining the sufficiency of a complaint

challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically. . . . If any facts provable under the express and implied allegations in the plaintiff's complaint support a cause of action . . . the complaint is not vulnerable to a motion to strike." (Citations omitted; internal quotation marks omitted.) *Friedman v. Liberty Mut. Ins. Co*., Superior Court, judicial district of Fairfield at Bridgeport, Docket No. FBT-CV-09-5029084s (May 6, 2010) (2010 WL 2365449, 1). A "motion to strike is essentially a procedural motion that focuses on the pleadings." (Internal quotation marks omitted.) *Dlugokecki v. Vieira*, 98 Conn. App. 252, 256; cert. denied, 280 Conn. 951 (2006). In other words, the purpose of a motion to strike is to challenge the adequacy of the pleadings, not to speculate about the adequacy of potential evidence that may be presented at the hearing.

In this case, the complaint is sufficient because it alleges facts that, if proven, would support a cause of action for retaliation. In his complaint, the complainant alleges that the respondent, the Connecticut state police (i.e., the department of public safety), is a state agency; that he is an employee of the respondent; that in August and/or September 2007, he disclosed information protected under § 4-61dd (a) to the office of the attorney general and to the auditors of public accounts; and that on March 17 2010, he learned that the respondent was taking personnel action against him in retaliation for his disclosure of the information by transferring/removing him as a pilot and completely

removing him as a pilot in a part-time status. If the evidence presented at the hearing proves these alleged facts, the complainant could prevail in his whistleblower retaliation claim.

II

According to the respondent, the "Complaint fails to state a claim upon which relief may be granted because it fails to plead necessary facts establishing a causal connection between Complainant's transmittal of information to the Attorney General's Office and his transfer occurring almost three years later." Motion, pp. 1-2. The respondent contends that the "Complaint cannot, as a matter of law, establish a prima facie case of whistleblower retaliation since it fails to allege facts sufficient to support the inference of a causal connection between his August-September 2007 disclosure of information to the Attorney General's office and his March 2010 transfer out of the [Connecticut State Police's] Aviation Unit. As detailed above, this failure is fatal to the Complainant's claim since such an inference is necessary for a prima facie claim of whistleblower retaliation." Motion, p. 4. The respondent's arguments, however, are not actually directed at the adequacy of the pleadings but rather to the complainant's ability to meet his evidentiary burdens. Whether the complainant can establish a prima facie case and prove retaliation is an evidentiary matter for the public hearing.

Although the respondent claims that the complainant cannot establish an inference of a causal connection because of the length of time between the disclosure and the adverse action, this inference can also be established by overt or circumstantial

evidence other than a temporal connection. Such evidence includes, but is not limited to: comments or acts made at the time of the transfer demonstrating retaliatory animus, differing treatment of similarly situated co-workers who did not disclose protected information, the falsity of the employer's explanation for the personnel action taken, and a pattern of adverse personnel actions taken by the respondent against the complainant since his disclosure. Whether the complainant has such evidence is a matter for the public hearing.

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Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
Sergeant Stephen J. Samson
John P. Shea, Jr., Esq.