STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities ex rel. Brenda Puryear, Complainant	:	CHRO No. 1130518
v.	:	
Echo Hose Ambulance and City of Shelton, Respondents	:	January 10, 2013

Ruling on Motion to Strike

Background and Procedural History

On June 9, 2011, Brenda Puryear filed an Affidavit of Illegal Discriminatory Practice (the complaint) with the Connecticut Commission on Human Rights and Opportunities (CHRO) against Echo Hose Ambulance (Echo Hose) and the City of Shelton (the City) (collectively, Respondents) on behalf of her minor daughter, Sarah Puryear (Complainant). The complaint alleges that Echo Hose and the City discriminated and retaliated against Complainant, an Echo Hose volunteer, because of her race and color in violation of the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. §§ 46a-60(a)(1), 46a-60(a)(4) (CFEPA) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. (Title VII).

The City filed a motion to strike the complaint, along with a supporting memorandum of law on October 4, 2012. Complainant and the CHRO filed objections and reply memoranda on November 29, 2012 and November 19, 2012 respectively.

Motion to Strike Standard

"The objective of a motion to strike is to test the legal sufficiency of the allegations of a complaint to state a claim upon which relief can be granted, or the legal sufficiency of a defense to that claim." *Rytman v. Colchester Foods, Inc.,* 2001 WL 1330416 *1 (Conn. Super.) citing, inter alia, *Doe v. Yale University*, 252 Conn. 641, 667 (2000); see also Practice Book, §10-39. "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." (Internal quotation marks omitted.) *Coe v. Board of Education*, 301 Conn. 112, 116-

17, 19 A.3d 640 (2011). "[P]leadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, 295 Conn. 240, 253, 990 A.2d 206 (2010). "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." *Brouchard v. People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991). A motion to strike "admits all facts well pleaded; it does not admit legal conclusions or the truth or accuracy of opinions stated in the pleadings." (Internal quotation marks omitted.) *Faulkner v. United Technologies Corp*., 240 Conn. 576, 588, 693 A.2d 293 (1997). "In ruling on a motion to strike, the court is limited to the facts alleged in the complaint. (Internal quotation marks omitted.) Id., 580. It is also limited to the grounds specified in the motion. *Meredith v. Police Commission,* 182 Conn. 138, 140, 438 A.2d 27 (1980).

Parties' Arguments

The City moved to strike the complaint on two grounds, arguing first that Complainant, an unpaid volunteer cannot state a claim of employment discrimination under CFEPA and/or Title VII, and next that it (the City) had not been Complainant's employer.

In opposing the motion, Complainant argued that the allegations of the complaint pertaining to Respondent's authority to supervise, discipline, reprimand and terminate her participation in the ambulance corps are, in essence, indicia of employment that, if proven, establish the existence of an employer-employee relationship and, as such, are legally sufficient to support of the statutory claims and overcome a motion to strike.

Complainant goes on to point out that neither Echo Hose nor the City has contested its status as an employer within the meaning of CFEPA and/or TITLE VII, nor has Echo Hose denied that, as alleged in the complaint, it is responsible for providing emergency medical services to and for the benefit of the City. Complainant notes that it is a matter of public record that Echo Hose provides these services in affiliation with and subject to oversight by the City's "EMS Commission." Echo Hose's chief, Michael Chaffee is a member of the EMS Commission. Accordingly, Complainant argues, the relationship between Respondents, coupled with Chief Chaffee's exercise of supervisory authority over Complainant is a sufficient foundation upon which to state a claim against the City as a "joint employer." Whether or not the City (as opposed to, or along with Echo Hose) is ultimately determined to have been her employer, Complainant concludes, is not an issue subject to resolution via a motion to strike, but a disputed material fact.

In seconding and supplementing Complainant's objections, the CHRO essentially characterizes the City's motion as premature and urges its denial pending discovery because "it remains to be seen whether an employment relationship exists." The CHRO also suggests that Complainant's "volunteer status may be sufficient under state law to constitute an employer-employee relationship."

Analysis

Under Connecticut law it is a discriminatory practice "(f)or an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color . . ." (Conn. Gen. Stat. § 46a-60 (a) (1)) [1] or to "discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or . . . filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84[2] (Conn. Gen. Stat. § 46a (a)(4))

Under Title VII it is an "unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin;" (42 U.S.C. § 2000E-2(a)) and Conn. Gen. Stat. § 46a-58 (a) provides in relevant part that "[i]t shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution

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[1] To establish a prima facie case of discrimination pursuant to Conn. Gen. Stat. § 46a-60 (a)(1) a complainant must show: (1) that he belongs to a protected class; (2) that he was qualified for the position; (3) that he suffered adverse employment action; and (4) that the adverse employment action occurred under circumstances permitting an inference of discrimination. See *Jacobs v. General Electric Co.*, 275 Conn. 395, 400-01 (2005).

[2] To establish a prima facie case of retaliation, a plaintiff must show four elements: (1) that he participated in a protected activity; (2) that the defendant knew of the protected activity; (3) an adverse employment action against him; and (4) a causal connection between the protected activity and the adverse employment action." *Ayantola v. Board of Trustees of Technical Colleges,* 116 Conn. App. 531, 536, 976 A.2d 784 (2009).

or laws of or of the United States, on account of religion, national origin, alienage, color, race, sex, this state sexual orientation, blindness or physical disability."[3]

Both CFEPA and Title VII define "employee" as "an individual employed by an employer" (Conn. Gen. Stat. § 46a-51(9); 42 U.S.C. § 2000e(f)), begging the main issue raised by the motion to strike, to wit: whether a volunteer may qualify as an employee for purposes of alleging discrimination under the cited statutes?

The Second Circuit has answered in the affirmative, holding that "an employment relationship within the scope of Title VII can exist even when the putative employee receives no salary so long as he or she gets numerous job-related benefits," and that "the question of whether someone is or is not an employee under Title VII turns on whether he or she has received direct or indirect remuneration from the alleged employer." *Pietras v. Bd. Of Fire Comm'rs of the Farmingville Fire Dist.,* 180 F.3d 468, 473 (2d Cir. 1999) (plaintiff, a probationary volunteer firefighter received no salary but was entitled to numerous firefighter benefits including a pension, life and disability insurance and death and medical benefits).

Complainant argues that we are not bound by the Second Circuit's decision and need not focus solely on remuneration in determining employment status. In the absence of a Connecticut court decision interpreting CFEPA's definition of "employee," she urges us to adopt the common law definition as "involving basically whether the person for whom the services are being performed has the right to control the person performing the services as to the result to be accomplished and as to the detailed means and methods by which it shall be accomplished. . . . If such control is present the person performing the services is the employee of the other. An important factor in determining control is the existence or the non-existence of the power to discharge." *State v. Housing Authority*, 157 Conn. 428, 431 (1969).

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[3] In *Trimachi v. Connecticut Workers Compensation Committee* (sic), 2000 WL 872451, *7 (Conn. Super), the Connecticut Superior Court reiterated the legal tenet long espoused in commission administrative decisions that General Statutes § 46a-58 (a) expressly converts a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws. See, e.g., *Commission on Human Rights & Opportunities ex rel. Adam Szydlo v. EDAC Technologies Corporation*, 2007 WL 4623072 (CHRO No. 0510368, November 19, 2007); *Commission on Human Rights & Opportunities ex rel. Dexter v. Connecticut Dept. of Correction*, 2005 WL 4828672 (CHRO No. 0320165, August 31, 2005). Thus, for example, this tribunal has jurisdiction to adjudicate a Title VII claim provided it is raised under the aegis of (and thus converted to a claim under) § 46a-58 (a).

Complainant contends that under *State v. Housing Authority* the allegations of the complaint pertaining to Respondent's control[4] over her are, if proven, legally sufficient to establish her status as an employee under the common law and CFEPA. Employment status, however, was never at issue in *State v. Housing Authority.* The employees in that case were salaried special policemen hired by the Bridgeport police department, but employed by the city's housing authority. At issue was the identity of their employer for the purpose of assessing financial responsibility for legally required employer contributions to their social security accounts. The existence of compensation was a predicate to the court's being able to employ the common law test cited by Complainant (used, in that case, to designate the responsible employer).

The federal versus state interpretation of anti-discrimination legislation was addressed by the Second Circuit in *Benson v. United Tech. Corp.,* 337 F.3rd 271, 276 (2nd Cir. 2003): [T]he Connecticut Supreme Court has also identified in its jurisprudence several relevant principles of statutory construction that are specific to the interpretation of the state's anti-discrimination statutes. First, it has indicated that it interprets remedial statutes "liberally in order to effectuate the legislature's intent." *Commission on Human Rights & Opportunities v. Sullilvan Associates,* 250 Conn. 763,782, 739 A.2d 238 (1999). Second, it has revealed a willingness to "review federal precedent concerning employment discrimination for guidance in enforcing [the state's] own anti-discrimination statutes," *Levy v. Commission on Human Rights & Opportunities,* 236 Conn. 96, 103, 671 A.2d 349 (1996), but has cautioned that it is not bound by federal interpretation and that, under certain circumstances, federal law "defines the beginning and not the end of [Connecticut courts'] approach to the subject," State v. Commission on Human Rights & Opportunities, 211 Conn. 464, 470, 559 A.2d 1120 (1989). Third, Connecticut's highest Court has also declared that, when comparing comparable state and federal statutes, it employs "the usual rule in statutory interpretation that the difference between the state and federal acts was purposeful and meaningful." *Evening Sentinel v. National Org. For Women,* 168 Conn. 26, 434-35, n.5, 357 A.2d 498 (1975). *Id.*

The definition of "employee" is identical under Title VII and CFEPA. In the absence of legislation amending the state's employment laws and/or any Connecticut case interpreting CFEPA's definition as extending its anti-discrimination protections to volunteers not within the ambit of the Second Circuit's analysis, I decline to do so.

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[4] The complaint alleges that Complainant was: interviewed for and accepted into Echo Hose's precepting program (¶4); subject to discipline (¶5); supervised (¶¶ 6, 9, 15.6, 17); suspended (¶7) reprimanded (¶19) and terminated (¶16, 20).

In supporting her opposition to the City's motion Complainant claimed to have received benefits as an Echo Hose volunteer that might meet the test of remuneration under the Second Circuit's interpretation, arguing that whether or not they do is a material fact in dispute which, as a matter of law, cannot be decided in a ruling on a motion to strike. The CHRO suggested that a decision as to the existence of an employment relationship between the parties should be postponed pending discovery.

Complainant alleges receipt of the following benefits from Echo Hose: "training, education, experience, equipment and eligibility for other EHAC positions." Benefits of this type are incidental to volunteering and typically conferred upon those who contribute their time. While they might provide resume value for those seeking employment, they have little or no monetary value. Their receipt does not bespeak receipt of direct or indirect remuneration and they are easily distinguished from salary substitutes or the "numerous job-related benefits" (pension, life insurance, disability insurance, death and medical benefits) cited by the Second Circuit in *Pietras* as conferring employment status on their recipient.

Viewing Complainant's allegations as to receipt of the enumerated benefits as true and construing them as broadly as the pleadings permit, they do not support the existence of an employment relationship. Discovery will not enhance Complainant's ability to plead receipt of more substantive remuneration nor, in the absence of such remuneration, is the question of employment status a disputed material fact.

Complainant has failed to allege sufficient facts to support the existence of an employment relationship between the parties.

The complaint is not viable. The motion to strike is granted.

It is so ordered this 10th day of January 2013.

Ellen E. Bromley,
Presiding Human Rights Referee

cc.

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