

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF  
TOWN OF WATERFORD

DECISION NO. 4459-A

-AND-

JUNE 23, 2010

UPSEU/COPS

-AND-

AFSCME, COUNCIL 15, WATERFORD POLICE UNION,  
LOCAL 1948, AFL-CIO

Case No. ME-28,319

A P P E A R A N C E S:

Attorney John M. Walsh, Jr.  
For UPSEU/COPS

Attorney Thomas R. Gibbons  
For the Town

Attorney Harry B. Elliott, Jr.  
For Council 15, AFSCME

**DISMISSAL OF ELECTION OBJECTION  
AND  
CERTIFICATION OF BARGAINING REPRESENTATIVE**

On January 12, 2010 United Public Service Employees Union (UPSEU or Petitioner) filed with the Connecticut State Board of Labor Relations (the Labor Board) a petition seeking to represent “[a]ll full-time investigatory and uniformed employees of the [Town of Waterford] Police Department with the authority to exercise police powers exclusive of the Chief of Police and the Deputy Chief.” (hereinafter “members”). (Exhibit 1). The members, at the time of the petition, were represented by AFSCME, Council 15, Waterford Police Union, Local 1948, AFL-CIO (AFSCME or Intervenor). On January 19, 2010 the Petitioner filed a second or amended petition with the Labor Board that was identical to the petition filed on January 12, 2010 except for the correction in the address for the Intervenor (Exhibit 2)

On January 29, 2010 the parties met in an informal conference with Assistant Labor Board Agent Elizabeth Dunn (Assistant Agent Dunn) where an Agreement for a Consent Election was reached. (Exhibit 16). The election was scheduled for February 16, 2010. At the informal conference representatives for both the Petitioner and Intervenor were in attendance as was Attorney Barbara Resnick (Resnick) whose business card was handed out. The business card identifies her as staff representative/attorney for the Petitioner in the Connecticut Organization for Public Safety Division (COPS) of UPSEU.

On February 11, 2010 the Petitioner held a meeting with members who would be eligible to vote in the election; eight or nine of whom were in attendance. Resnick was present at the meeting of February 11, 2010, along with Ronald Suraci (Suraci) and Attorney John Walsh (Walsh). The members were informed, in response to questions about who would be representing them, that Resnick was a full-time attorney with the Petitioner and would be representing members if they chose the Petitioner at the election. In addition to what was said about Resnick, Walsh answered questions from the members regarding his role in representing them if the Petitioner was chosen as their representative. Also, the members were told that Attorney Michael Fitzpatrick would represent the members in criminal matters. During the course of the meeting members were informed, in response to a question, that not all matters would be handled by attorneys that certain matters would be handled by the Petitioner's staff. (Exhibit 19).

The Intervenor, on February 12, 2010, was aware that the State of Connecticut's Judicial Branch website listed Resnick's license to practice law in the State of Connecticut as being administratively suspended. (Exhibits 21 and 25). Waterford Police Detective Ed DeLaura (DeLaura) was made aware on February 12, 2010 that there was a question regarding Resnick's ability to practice law in Connecticut. DeLaura shared the information regarding Resnick with other police officers in his union and at least one member of the executive board of his local union. DeLaura, prior to the election on February 16, 2010, informed members that he felt that the questions regarding Resnick's law license status was something to be considered when choosing their union representative. Officer Robert Yuchniuk (Yuchniuk), a member of the Intervenor's executive board, also attended the meeting on February 11, 2010. After the meeting he was made aware by an AFSCME employee that there was a concern regarding Resnick's ability to practice law in Connecticut. Yuchniuk spoke to several other police officers prior to the election on February 16, 2010 and disseminated the information questioning Resnick's license status. Yuchniuk shared with the other union members that he believed this would be a problem with the representation that the members would receive if the Petitioner won the election.

On February 12, 2010 Attorney Richard Gudis (Gudis) was informed by Troy Raccuia (Raccuia), an organizer with the Intervenor, that Resnick had been

administratively suspended from the practice of law in Connecticut. Raccuia, based upon his research, was aware that the administrative suspension could be rectified by payment of the client security fund fee. Raccuia was also aware, based upon his research on the judicial branch website, that the suspension of Resnick's license was administrative for failure to pay a fee and not disciplinary in nature.

On February 16, 2010 a secret ballot election was conducted by Assistant Agent Dunn to determine the selection of a collective bargaining representative under the Municipal Employee Relations Act (the Act or MERA). Both the names of the Petitioner and the Intervenor appeared on the ballot. The balloting was open to eligible members during two separate time periods, from 7:00 to 8:30 a.m. and again from 3:00 to 4:30 p.m. on February 16, 2010. Raccuia was present at the election prior to the start of the balloting and was also present for the afternoon balloting. Raccuia did not inform Assistant Agent Dunn prior to either the morning or afternoon balloting that the Intervenor had any concerns or objections regarding its belief that the Petitioner misrepresented Resnick's status as a licensed attorney in Connecticut. Raccuia did not contact the Client Security Fund to confirm the information published on the Judicial Branch website on February 16, 2010.

Gudis was also present during the election. Gudis arrived before the balloting started, but after Assistant Agent Dunn had cleared the room to start the balloting. Gudis, in the morning, never asked to speak to Assistant Agent Dunn in order to alert her to the Intervenor's objections to the election based upon the misrepresentation regarding Resnick that it believed had occurred. Nor did Gudis raise any objection prior to the balloting that began at 3:00 p.m. Gudis made no attempt on the day of the election, to contact the Client Security Fund to confirm the information published on the Judicial Branch's website regarding the administrative suspension of Resnick's law license.

On February 16, 2010, the results of the election were set forth in "The Report Upon Secret Ballot" (the Report) prepared by Assistant Agent Dunn and certified by both the observers for the Petitioner and Intervenor. The Report states that the, "...secret ballot election was fairly and impartially conducted and the ballots cast were duly and fairly counted under their supervision in the presence of representatives of interested parties..." (Exhibit 4). The Report was signed by representatives of the Town of Waterford, Petitioner and Intervenor. Out of the 45 potentially eligible voters (Exhibit 5) the Report indicated 21 votes were cast in favor of the Petitioner and 14 votes were cast in favor of the Intervenor. There were no challenged ballots. (Exhibit 4). No objections were filed by the Intervenor with respect to the alleged misrepresentation with Assistant Agent Dunn prior to or during the course of the election.

On February 17, 2010 Gudis contacted the Client Security Fund and confirmed Resnick's license to practice law in Connecticut had been administratively suspended for

failure to pay the client security fund fee. On February 18, 2010 the Intervenor filed with the Labor Board an Objection to the election citing two grounds for objection: (1) that the Labor Board Assistant Agent allowed the president of the Intervenor to act as an observer during the election for the Petitioner, thereby preventing the employees from making a free choice; and (2) that as part of the campaign by the Petitioner it announced to the Intervenor 's members that its attorney was licensed to practice law in both Connecticut and New York and that this statement constituted a misrepresentation by the Petitioner because the attorney's license to practice law had been administratively suspended in Connecticut. (Exhibit 5). The Intervenor claimed that as a result, the outcome of the election did not reflect the true wishes of the voters and requested that the Labor Board order a new election. (Exhibit 5).

On February 25, 2010 the Petitioner filed a response to the Intervenor's Objection requesting that the Labor Board dismiss the Objection on the grounds that since the Intervenor had not raised its objections prior to the election it waived its right to object. Further, the Petitioner claimed that its attorney was admitted to the Connecticut Bar in December 1994 and is licensed to practice law in Connecticut. An affidavit from Resnick was submitted with its response. (Exhibit 6).

On March 2, 2010 the Intervenor filed a reply to the Petitioner's response. (Exhibit 7) In its reply, the Intervenor alleged that Resnick was administratively suspended prior to and through the election, and that if the membership had had knowledge of her status it would have changed the outcome of the election. Additionally, on March 2, 2010 Gudis sent a letter to the Labor Board's Agent, Katherine Foley, in which he enclosed a copy of a letter from the Statewide Grievance Committee regarding the complaint he filed with respect to Resnick's alleged violation of the attorney's code of conduct.<sup>1</sup> (Exhibit 30). On March 16, 2010 the Labor Board's General Counsel informed the parties that no further information would be considered by the Labor Board in making its determination whether to rule on the Objection without a hearing or order a hearing on the Objection. (Exhibit 9).

On March 30, 2010 the Labor Board issued a Decision and Order and Partial Dismissal of Election Objection. *Town of Waterford*, Decision No. 4459 (2010) (Exhibit 8). The Labor Board dismissed the Intervenor's claim that the presence of the Petitioner's election observer, who was also the president of the Intervenor local, interfered with the member's free choice in the election. The Labor Board found that the Intervenor had an opportunity to formally object to the election observer's participation and chose not to do so prior to the start of the election. It ruled that the failure to raise the objection at that time served as a waiver of such objection. In addition, the Labor Board ordered a hearing on the Intervenor's second objection with respect to the misrepresentation claim. The decision informed the parties that the Labor Board would

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<sup>1</sup> As noted in our prior decision and order, *Town of Waterford*, Decision No. 4459 (2010), the correspondence from the Statewide Grievance Committee provided by Gudis will not be considered by the Labor Board in ruling on this objection. The determination of whether an attorney has violated the rules governing attorney conduct is not a proper matter for this Labor Board.

first consider, as a threshold issue, whether Intervenor had knowledge of the Petitioner's hiring of Resnick as the Petitioner's attorney and the extent of that knowledge.

The parties appeared before the Board for a hearing on Intervenor's Objection on April 15, 2010 and May 10, 2010. All parties appeared at the hearing and were provided a full opportunity to present evidence, examine and cross-examine witnesses and make argument. At the conclusion of evidence on the threshold issues the Petitioner made an oral motion to dismiss the Intervenor's Objection on the grounds that the evidence demonstrated that the Intervenor had the information regarding Resnick prior to the start of the election and could have corroborated that information and raised its objection on February 16, 2010 and its failure to do so acts as a waiver. The Intervenor, in opposition to the motion to dismiss, argued that there was no notice that Resnick was the Petitioner's attorney in Connecticut until February 11, 2010 and that because of the two state holidays that fell after the meeting and prior to the election, that there was no opportunity to confirm the information it had obtained regarding her law license and lodge the objection. Further, the Intervenor argued that the misrepresentation was in the nature of a forgery that could not be discerned as propaganda by the members and therefore, based upon the timing of the election there was no opportunity to investigate the misrepresentation and refute it.

### DISCUSSION

As we noted in our initial Decision and Order and Partial Dismissal of Election Objection "[r]epeated elections are a burden on the State and the parties, and they promote instability. Once an election has been held every presumption should favor its validity unless its holding has been forced on a party in the teeth of protest, or there is a clear showing that the election result probably failed to reflect the true wishes of the voters." *Town of Farmington Board of Education*, Decision No. 1261-A (1975). The case law of this Labor Board has repeatedly made clear:

[I]f a party has knowledge of facts which it *believes* form the basis for an objection, that party must raise that objection before the election is conducted. Otherwise, the other parties and this agency spend time, effort and money in reliance upon the belief that the election is being properly conducted. Under such circumstances, the party who waits until the results of the election are in to make its objection ordinarily waives its right to object.

*City of Bridgeport*, Decision No. 2482-A (1986) (emphasis added). (internal citations omitted)

The Intervenor claims that the misrepresentation of the Petitioner as to the status of Resnick's license to practice law was material and affected the outcome of the election. At the hearing in this matter, the Intervenor claimed that it did not learn that Resnick was representing the Petitioner until the late day meeting between the membership and the Petitioner on February 11, 2010. Further, that because both February 12 and February 15, 2010 were state holidays; they could not verify the

information contained on the Judicial Branch website prior to the morning of February 16, 2010 when the election began and therefore could not have filed an objection prior to its start. We are not persuaded.

As noted above the Labor Board looks to whether or not the party raising the objection had the opportunity to do so prior to the election being conducted. *Franklin Board of Education*, Decision No. 3368 (1996); *Town of Farmington Board of Education, supra*; *City of Norwich*, Decision No. 804-A (1968); *Town of Groton*, Decision No. 841 (1968). The Intervenor learned that Resnick's license had been administratively suspended on February 12, 2010 by accessing the public website maintained by the Judicial Branch where attorney records can be accessed and reviewed. Both Raccuia and Gudis were present at the election on February 16, 2010. Neither Raccuia nor Gudis raised an objection with Assistant Agent Dunn or alerted her to the Intervenor's concern regarding the misrepresentation of Resnick's license to practice law prior to or during the election. In fact, despite the fact that there was a six and one-half hour break between the morning and afternoon balloting the Intervenor made no attempt to contact the Client Security Fund on February 16, 2010 to obtain confirmation of Resnick's license status that it claimed was needed in order to raise an objection to the election.

This Labor Board noted in *Town of Farmington Board of Education, supra*, that, "[i]nterruption of the election process is a fairly serious step and should not be taken irresponsibly, upon mere rumor." However, the Intervenor's claim of misrepresentation in this case was not based upon a rumor. It is important to note that the information possessed by Gudis and Raccuia, forming the basis for their concerns was not provided by means of an anonymous communication, rumor or idle speculation. The information that formed the basis for the Intervenor's objection was readily obtainable on a website that could be accessed by any member of the public. We commend Attorney Gudis for not wanting to disseminate potentially inaccurate and thus harmful information regarding a fellow member of the Bar until that information could be validated; however, Gudis or Raccuia could have quietly raised an objection to Assistant Agent Dunn.

The Intervenor also claims that the Client Security Fund offices were closed for the two state holidays, Lincoln's Birthday on February 12 and President's Day on February 15, preventing them from being able to verify the information regarding Resnick prior to the 7:00 a.m. start of the election on February 16, 2010. While this might be true, as noted above, the Intervenor did not raise an objection prior to the start of the election based upon their belief that they potentially had grounds for an objection. The circumstances in this case are on point with those at issue in *Town of Farmington Board of Education, supra*. In *Town of Farmington Board of Education*, the union was made aware of a meeting that was held in violation of the electioneering rules one and one-half hours prior to the start of the election. Due to the short time period, the information regarding the meeting could not be verified by the union. The union notified the Assistant Agent before the start of the election of their concerns, but chose to let the election proceed. The Labor Board found that the union had waived its objection.

In this case, the Intervenor was aware prior to the start of the election that Petitioner had potentially misrepresented Resnick's law license to the members; it too wanted to verify the information and chose not to raise any objection on the day of the election. As in *Town of Farmington Board of Education*, the failure to raise the objection in this circumstance constitutes a waiver.

Further, although the information could not be verified prior to the start of the election at 7:00 a.m., at no time on February 16, 2010 when the Client Security Fund offices were open did the Intervenor make any attempt to verify the information and raise an objection. Such an objection, lodged during the break in the election, would have permitted the Labor Board's agent to determine whether to stop the election before the afternoon balloting began or to impound the ballots until the Labor Board had the opportunity to rule on the objection. The Intervenor's delay in this case also amounts to a waiver of the objection.

We also find that Resnick was present at the informal conference held on January 29, 2010 with the Intervenor more than two weeks prior to the election. The Intervenor argues that the Petitioner often used New York attorneys to represent their members and that because the business card indicated UPSEU/COPS they did not know that Resnick would be the full-time attorney in Connecticut until the February 11, 2010 meeting. Resnick's business card, while reflecting both the New York address for UPSEU and the Connecticut address for COPS, clearly indicates that she was working in the COPS division. This is the same information that Intervenor believed amounted to a material misrepresentation that could affect the outcome of the election when that same information was given to the members on February 11, 2010.

The issue before this Labor Board was whether or not the Intervenor had knowledge of facts it believed formed the basis for an objection and the opportunity to file that objection. Based upon the above, the Intervenor could have discerned as early as January 29, 2010 the information about Resnick's administrative suspension of her law license. We find that the Intervenor had both knowledge of its grounds for an objection and the opportunity to object prior to February 16, 2010 thus invoking our rule requiring the union to choose whether to proceed with the election and waive the objection, or to protest the holding of the election by raising its objection. *Town of Farmington Board of Education, supra*.

The Intervenor, in opposition to the Petitioner's motion to dismiss the objection, also claims that the misrepresentation was in the nature of a forgery under the rule in *Shopping Kart Food Market, Inc.*, 228 NLRB 190, 94 LRRM 1705 (1977) adopted by the Labor Board in *City of New Haven*, Decision No. 1760 (1979). In *Shopping Kart* the National Labor Relations Board (NLRB) held that it would no longer set aside an election for misleading statements made during a campaign unless the deceptive material put forth involved the NLRB in its processes or used what amounted to a forgery that a voter would be unable to recognize as propaganda. We do not find that the Petitioner's actions amount to a forgery as contemplated by the rule established by this Labor Board in *City of New Haven, supra*.

In the instant matter, Raccuia provided questions to members to ask the Petitioner regarding who its attorneys were, whether they were full-time and in which state they were located at the meeting held on February 11, 2010. (Exhibit 17). Yuchniuk, who was present at that meeting, indicated that the response to those questions was “Barabara Resnick 15 year atty [sic], with cops [sic] for a few months, formerly worked as atty [sic] representing NYPD officers. she [sic] is in COPS office daily.” (Exhibit 19). There is nothing in the information provided by the Petitioner about Resnick which would rise to level of a forgery such that the voters would have no way to discern fact from fiction. The information about Resnick could be verified, and in fact that is exactly what the Intervenor sought to do. Further, Yuchniuk and DeLaura took steps to ensure that the members were aware prior to the election that there was an outstanding question about Resnick’s ability to practice law in Connecticut.

The Intervenor having failed to raise its objection prior to the election, we find such objection has been waived. The election held on February 16, 2010 was a valid election. The Petitioner having received a majority designation by the employees, is the exclusive representative for purposes of collective bargaining.

### **ORDER**

By virtue of the authority vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act and regulations promulgated pursuant thereto, it is

**ORDERED** that the Objections to the election conducted by the Connecticut State Board of Labor Relations on February 16, 2010 are hereby dismissed; and it is

**CERTIFIED**, that the United Public Service Employees Union (UPSEU/COPS) has been selected as the representative for purposes of collective bargaining by a majority of all full-time investigatory and uniformed employees of the Town of Waterford Police Department with the authority to exercise police powers exclusive of the Chief of Police and the Deputy Chief, and that UPSEU/COPS is the exclusive bargaining representative of all said employees for the purpose of collective bargaining with respect to wages, hours and other conditions of employment.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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John W Moore, Jr.  
Chairman

Patricia V. Low  
Patricia V. Low  
Board Member

Wendella Ault Battey  
Wendella Ault Battey  
Board Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing was mailed postage prepaid this 23<sup>rd</sup> day of June, 2010 to the following:

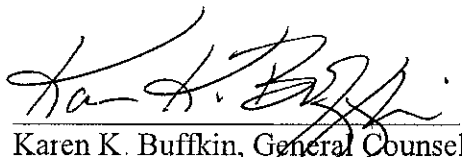
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