2023 WL 370964
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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
J.D. OF DANBURY AT DANBURY.

Sarah Beth Addison LARSON
v.
TOWN OF SHERMAN and Board of Selectman of the Town of Sherman

DOCKET NO. DBD CV-196030046
|
JANUARY 19, 2023

MEMORANDUM OF DECISION

Brazzel-Massaro, J.T.R.

INTRODUCTION

***1** Sarah Beth Addison Larson ("Larson") has filed this appeal of the decision of the Town of Sherman Board of Selectman's decision to affirm the dismissal of Larson as the fire marshal pursuant to C.G.S. § 29-299. The Plaintiff/Appellant filed a complaint with a number of allegations that her dismissal was improper. The Plaintiff was appointed Fire Mashal of the Town of Sherman on October 27, 2016. (Compl. ¶ 1). This appointment was made by the Board of Selectman of the Town of Sherman. Soon after the plaintiff was appointed, Don Lowe was sworn in as the First Selectman. His duties involved the oversight of all town departments and agencies including the Office of the Fire Marshal. There were extensive events and disagreements as to the performance and salary for the plaintiff as she served in the position of Fire Marshal. The conflicts began shortly after the parties took part in a March 2018 budget workshop which included the review and determination of the budget to be issued for the plaintiff and her duties. Prior to the budget workshop, the plaintiff requested an increase in her salary. Neither the First Selectman nor the Board of Selectman as the governing board agreed to an increase in salary for Ms. Larson. As part of the 2018-2019 budget submissions, the Board of Selectman reviewed Larson's requests for a salary increase, a request for additional protective equipment, for continuing education expenses and college tuition as well as the payment of professional membership fees. The Board of Selectman in reviewing the plaintiff's proposed budget agreed to approve an increase in salary and some funding for the protective equipment (PPE) (ROR Tr. at 23). The salary was increased but did not meet the amounts requested by Ms. Larson. At the conclusion of the budget hearing, Ms. Larson blatantly expressed her consternation with the budget approved. (ROR Tr. 23-24).

Shortly thereafter, the Board was notified by Larson that she filed a complaint with the Department of Labor, Division of Labor, Division of Wage and Workplace Standards and the Division of Occupational Safety and Health Act alleging violations regarding safety equipment.[1]

After the complaint about the equipment, the Board asked that the plaintiff refrain from active scenes until the Town could comply with any OSHA requirements. After the budget process the Board voted to approve funding for the protective equipment. The plaintiff violated this order and appeared at a fire prior to receiving the protective equipment which resulted in Mr. Lowe issuing a warning. (ROR. Ex. L)

The plaintiff's major complaint was her belief that the Town violated the law as to the salary provided to her and the number of hours she was to work in her capacity as the Fire Marshal. (Compl. ¶¶ 8, 9, and 10). She contends in her complaint that the First Selectman, Don Lowe, retaliated against her in a number of ways as a result of the complaints she made to the Department of Labor about her pay and the protective equipment that was needed for her work as fire marshal. (Compl. ¶ 11 a-i). Among the disputes between the First Selectman and the plaintiff were the salary that was to be paid and the per week number of hours the plaintiff would be working as the Fire Marshal. In addition, the First Selectman was requiring that the plaintiff provide a log of her work hours and establish specific office hours that the office would be open to the citizens of the town. The plaintiff objected to submission of hours and to creating specific office work hours. As a result of the plaintiff's complaint about her

salary, the town was the subject of an investigation by the Department of Labor (DOL) and a review was conducted as to the plaintiff's hours of work and pay to determine whether there were violations of the wages and work hours related to the plaintiff's position and if so a correction. The town cooperated with the investigation which resulted in the decision and notice from the DOL that the plaintiff's position should be reclassified to a non-exempt position. In December 2018 the defendant made some changes to the work hours and pay which was precipitated by the DOL review. The town set the rate as $15.00 per hour and the hours at 16 hours. (ROR Exhs. K and N).[2] The agreement with the DOL was to become effective on January 1, 2019. The first selectman's office attempted to schedule a meeting with the plaintiff to have her sign off on the agreement with the DOL and establish a reclassification of the position. Larson refused to meet with him and sent a response that, "The only classification to which I agree to for the Office of the Fire Marshal is to that of an exempt employee of $475 per week. If these are not the terms of discussion, I will attend as long as a State Trooper is present." (ROR Ex. N).[3] The refusal to meet and follow the DOL findings and criteria appeared to be the final impetus after a series of events and disagreements resulting in the notice of dismissal and a hearing to Ms. Larson involving the position of fire marshal.

***2** The plaintiff was notified of her suspension from service as the Fire Marshal on December 27, 2018 with pay and received notice on January 4, 2018 that there would be a dismissal hearing on January 12, 2019. (ROR Ex. N and Ex. O). The Board letter notice of the hearing provided as reasons for considering the dismissal: "1) Your willful insubordination to attend a meeting on 12/27/18 at which your position as fire marshal was going to be properly reclassified to non-exempt status with designated hours and an established hourly wage, 2) Your inappropriate insistence that you would only agree to a reclassification to exempt status at a salary of $475 per week. This is deemed as abandonment of the position, 3) Filing a false complaint with the Connecticut OSHA Division that the First Selectman had refused to obtain protective gear for you when a request for such protective gear had never been made, 4) Insubordination in repeated refusals to refrain from working as fire marshal until protective equipment could be obtained despite multiple directives given by the First Selectman, 5) On November 8, 2018 you were insubordinate by yelling and screaming at the First Selectman and state that you would not comply with his directive that you hold regular office hours each week and provide work log of your activities, 6) Attempting to close the Town Senior Center when you had no authority to do so, 7) Your belligerent insubordination on December 5, 2018 in refusing to agree to comply with directive to file a weekly work log of your activities, 8) Your repeated refusal to limit your hours to 18 per week without authorization from the First Selectman." (ROR EX.O). The defendant conducted a public hearing on January 12, 2019 during which evidence and statements were permitted including allowing members of the public to speak, At the conclusion of the public hearing, the Board of Selectman voted unanimously to terminate the plaintiff from her position. (ROR Tr. at 97)

The plaintiff has appealed the termination by way of complaint dated February 6, 2019 with a Return Date of March 5, 2019.

The Board of Selectmen conducted a full public hearing on January 12, 2022. The plaintiff presented testimony and evidence along with other individuals from the Town who provided information about the claims by the First Selectman for dismissal. The court permitted the plaintiff to continue the matter so that she could present testimony or evidence concerning her claim of predetermination. The plaintiff presented a letter about the difficulty with obtaining the testimony. The defendant responded and submitted two new affidavits from Mr. Keenan and Mr. Ostrosky. On November 17, 2022, the court conducted a status with the plaintiff and the attorney for the defendants to determine if all of the additional support on the claim of predetermination has been submitted. Counsel and the self-represented plaintiff confirmed that there is no further documentation and the court can issue a decision.

DISCUSSION

A. General Standard

The Connecticut State Statutes control the removal of a local fire marshal. In particular, Conn. Gen. Stat. § 29-300 provides in relevant part that: "No local fire marshal shall be dismissed unless he has been given notice in writing of the specific grounds for such dismissal and an opportunity to be heard in his own defense, personally or by counsel, at a public hearing before the authority having the power of dismissal. Such public hearing unless otherwise specified by charter, shall be held not less than five nor more than ten days after such notice. Any person so dismissed may appeal within thirty days following such dismissal to the superior court for the judicial district in

which such town, city or borough is located ... Said court shall review the record of such hearing and, if it appears upon the hearing upon the appeal that testimony is necessary for an equitable disposition of the appeal, it may take evidence or appoint a referee or a committee to take such evidence as it may direct and report the same to the court ... The court, upon such appeal, and after a hearing thereon, may affirm the action of such authority, or may set the same aside if it finds that such authority acted illegally or arbitrarily or in the abuse of its discretion or with bad faith or malice."

The standard of review of these claims is identical to the standard of review in general for administrative appeals under General Statutes § 4-183 (j). *Vacon* v. *Board of Commissioners of Enfield Fire District*, Superior Court, judicial district of Hartford, Docket No. CV-990493909S (June 26, 2000, *Conn, J.*) (2000 WL 1058353). Thus, this court may not retry the case or substitute its own judgment for that of the [agency] ... The conclusion reached by the [agency] must be upheld if it is legally supported by the evidence ... The credibility of witnesses and determination of factual issues are matters within the province of the administrative agency, and, if there is evidence ... which reasonably supports the decision of the commissioner, we cannot disturb the conclusion reached by him ... Our ultimate duty is to determine, in view of all of the evidence, whether the agency in issuing its order, acted unreasonably, arbitrarily illegally or in in abuse of discretion." *Vacon* ld. *3.

B. Duties and Findings of the Board

***3** The plaintiff contends that at all times she faithfully performed her duties as the fire marshal and the defendants improperly dismissed her from the position. The plaintiff's complaint contains seven arguments outlining the reasons for her position that the court should sustain her appeal. She alleges that; a) the hearing lacked fundamental fairness for the reason that the Board of Selectman reached its decision to terminate her regardless of the evidence adduced at the hearing; b) the hearing lacked fundamental fairness for the reason that Plaintiff was not provided with a neutral body to conduct the hearing and render a decision regarding termination of her position as the members of the Board of Selectman were biased and had predetermined to terminate her; c) the hearing lacked fundamental fairness for the reason that the individual who oversaw the hearing was the Town Counsel, and therefore the hearing lacked a non-partisan presiding officer; d) the hearing lacked fundamental fairness in that Plaintiff was suspended without pay prior to receipt of the letter notifying her of the January 12, 2019 hearing, and she was deprived of access to information on her Town of Sherman computer and other Town of Sherman documents which were supportive of her position, thereby impeding her defense at the hearing; e) the Board of Selectmen offered insufficient evidence to support the charges made against the Plaintiff; f) the decision to terminate Plaintiff was retaliatory in nature, as a result of the complaints that she filed with the Department of Labor with regard to wage and OSHA violations; and g) the Board of Selectmen did not establish that Plaintiff had failed to faithfully perform her duties as required pursuant to Connecticut General Statutes Section 29-299."

A number of the plaintiff's claims before this court address the hearing being fundamentally unfair because the Board reached an agreement to terminate which she contends was regardless of the evidence adduced at the hearing, the Board was not a neutral body to conduct the hearing and thus were biased and predetermined to terminate, the hearing was not conducted with a non-partisan officer to provide oversight, (even though this was done by the Town counsel) and lastly that she did not have access to her Town computer or documents for the hearing thus impeding her defense. She also argued that the termination was retaliatory for the Wage and OSHA complaint and that there was insufficient evidence of the charges she failed to faithfully perform her duties. The plaintiff has alleged at first that the Board did not provide a basis for the dismissal. However, the transcript and exhibits clearly provide the reasons for the dismissal. The First Selectman sent a letter to the plaintiff dated January 2, 2019 as noted above which provided 8 reasons that the Town was considering the dismissal as Fire Marshal. (ROR Exh. O) The letter also informed the plaintiff of a public hearing on January 12, 2019. Id. The dismissal and notice follow the requirements of C.G.S, § 29-300.

During the course of the hearing before the Board of Selectman, the plaintiff did not address the claims of retaliation in the same manner. Additionally, in this hearing on the administrative action, the plaintiff did not provide testimony, evidence or support for many of her claims of fundamental fairness. The parties refer the court to the case of *Bartlett* v. *Krause*, 209 Conn. 352 (1988) for the argument concerning the exercise of fundamental fairness and the notice of dismissal and thereafter a hearing addressing the appropriateness of the dismissal. The *Bartlett* case offers a balancing process in determining whether the process of dismissal is appropriate. The court establishes that there are procedural safeguards prior to dismissal. The factual

background of the two cases differs but the court addressed the issue of whether the hearing process for the dismissal of the fire marshal provided a full and fair process with the proper notice. The first issue is notification in writing of the specific grounds for the proposed dismissal. Second, the meaningful opportunity to be heard by counsel (or in this case the appellant who is self-represented) at a public hearing before the defendants who have the power of dismissal.[4] Third, a statement, oral or in writing, of the reason or reasons upon which the defendant's premise termination if that is the sanction. Unlike the facts and legal questions in *Bartlett*, the plaintiff received proper notification of her suspension and thereafter the public hearing scheduled for January 12, 2022, and opportunity to address the proposed dismissal. (ROR Ex.O and Ex. N). At the hearing on January 12, 2022, the plaintiff asked and was given an opportunity to address the Board. The Board allowed her to speak, to ask questions, to present evidence and witnesses. The plaintiff received the letter explaining the basis for the dismissal and was informed during the hearing that a failure to enter into the agreement with the DOL had a drastic result, in that, the town would be found to be out of compliance with the DOL. The defendant through Mr. Lowe, Ms. LaVia and Attorney Forsyth expressed the impact her refusal to sign the agreement would have on the town. Throughout the hearing the plaintiff disagreed with the assessment and again expressed her skepticism of the agreement and unwillingness to sign off. The First Selectman referred to this refusal during the time from December until the letter of dismissal as an abandonment of the position by Ms. Larson, because without agreeing she could not conduct the work as fire marshal since the town would be considered as out of compliance. The defendants' approach to the disagreement and informing the plaintiff of the negative impacts to the town informed the plaintiff of the difficulty with her continued performance of the duties. (ROR Tr. 85-86). This notification and hearing to address the problems satisfied the fundamental fairness and due process for the plaintiff in accordance with *Bartlett* The defendants satisfied the notice and hearing requirements of the statute.

***4** The plaintiff thereafter includes additional claims of predetermination and contends that the first selectman, the attorney and in some respects the board acted in violation of her due process rights. Although provided an opportunity to present specific facts related to the claim, the plaintiff was unable to do so. The defendants responded to the claim with two affidavits from two of the three members of the Board of Selectman.[5] The claim of the plaintiff is nothing more than speculation. The transcript of the hearing provides testimony of the First Selectman and some members of the Board attempting to explain the serious nature of the DOL settlement agreement as well as the need to present a work log or schedule. The affidavit of Mr. Keenan states, "I did not know how I would vote in response to a motion for dismissal, nor was I part of any discussions with the other Board members as to how I would vote ... I wanted to see all the evidence and hear from Ms. Larson before making a decision." (September 9, 2021 affidavit of Keenan ¶ 6). His affidavit further refers to the claim that she was unable to work with the First Selectman and Keenan states, "I voted for dismissal based on Ms. Larson's failure to reassure me that she could work in harmony with the First Selectman." Id. ¶¶ 8-9. The affidavit of Robert Ostrosky also indicates that he attended the January 12 meeting "with an open mind and wanted to see all the evidence and to hear from Ms. Larson before making a decision ... and voted for dismissal because Ms. Larson had demonstrated a repeated failure to comply with basic instructions from her direct supervisor, and she did not offer any indication that this refusal to take direction would change going forward. Therefore, I did not have faith that Ms. Larson could do the job required of the Fire Marshal." (September 10, 2021 Affidavit of Ostrosky ¶¶ 8 and 10). The hearing transcript demonstrates an active interest by Mr. Ostrosky about the claims. He specifically asked Ms. Larson to explain which grounds were not true and the resulting conversation did not provide a response but simply her interpretations. These affidavits provide sufficient support that there was no pre-determined outcome for the hearing. The testimony and evidence presented at the hearing clearly paint the picture of a non-cooperative and unyielding employee as the fire marshal.

Ultimately, the plaintiff took the same position of non-cooperation as prior to the notice of dismissal. At one point she inferred that the resolution was for her to go back and renew her complaint with the DOL. (ROR Tr. 86). Unfortunately, the plaintiff appeared to view her appointment as autonomous. She discusses her due process rights and entitlement to the job. She tells the Board during the hearing that "the fire marshal is not like all other employees." (ROR Tr. 72). However, the statute, C.G.S. § 29-299 states, "If a local fire marshal fails to faithfully perform the duties of his office, the appointing authority of the municipality in which he is serving shall, after proper inquiry, dismiss him and appoint another in his place ..." In reviewing the appeal, the court "after a hearing thereon, may affirm the action of such authority, or may set the same aside if it finds that such authority acted illegally or arbitrarily or in abuse of its discretion or with bad faith or malice."

The remaining issues on appeal before this court concern only whether the fire marshal, Larson, was properly dismissed for a failure to faithfully fulfill her duties as the fire marshal or if the dismissal was illegal, arbitrary or an abuse of discretion. The numerous claims in her complaint, paragraph 11 a thru i note all of the actions taken by the First Selectman that relate to job duties and performance which the plaintiff interprets as retaliation. The transcript before the Board provides some of the very same conduct in her approach and responses to the Board which formed the discord between the plaintiff and the First Selectman.

At the public hearing before the Board, the chairman addressed each of the eight reasons for the dismissal noted in the letter to the plaintiff. (ROR, Tr. at 3-4) (ROR, Exh. O)

A great deal of the testimony offered by the appellant before the Board of Selectman, that is, the Board with authority for the appointment and dismissal, was not relevant to the actual basis for dismissal, however, the transcript paints a portrait of very dysfunctional relationship between the plaintiff and the Town. In particular, the transcript and the documents demonstrate that the plaintiff resisted any accountability for her work and ultimately, she refused to accept the wage and performance requirements as well as the DOL reclassification set forward by the First Selectman who had the responsibility for overseeing her work. Ms. LaVie stated "Addison isn't the only employee asked to be reclassified to be in compliance. And other employees have complied effective January 1st which is the directive that I was given." (ROR Tr. 20). However, Ms. Larson is the employee who refuses to meet and discuss reclassification except by her terms and ultimately would not agree.

The plaintiff testified about the performance of some of her work and in fact had citizens of the Town speak on her behalf at the hearing. From the testimony of many of the people, the plaintiff certainly had the right demeanor to assist them in their contacts with her office. However, on a different note, the Town provided testimony and evidence that the plaintiff performed many acts which could have caused disruptions in the town and violations for the town as a result of the wage issues, improper application of regulations and alleged equipment requirements which were budgeted. In each of these instances the plaintiff offered her version of events and her right to take action or refuse to agree to an employment agreement as a non-exempt employee with an hourly salary with the Board of Selectman.

***5** The first reason for dismissing the plaintiff involved the final resolution of the complaint initiated by the plaintiff relating to her salary and hours for performing her assigned tasks. This reason appears to be in the forefront of the difficulties. It involves not just the performance of the duties but the compensation for the work which the town negotiated a resolution from the DOL. It included an increase in salary but not to the level plaintiff has demanded.[6] Even at the public hearing the plaintiff continued to disagree and negotiate her employment status instead of accepting the terms by the Town. (ROR Tr. 86, 96). The Town contended through the testimony of Ms. Lavia that as a result of the complaint by Ms. Larson, the Department of Labor came into the town offices, reviewed the records of hours and salary and made a determination that the Town was in non-compliance. (ROR Tr. 87). Ms. Lavia further testified that "[W]e were told by Luz Rodriguez from the labor division that by January 1st we had to reclassify the job in order to be in compliance. Their finding (sic) were based on the job description which was posted and which was applied and which was appointed. That is how they determined that it was a nonexempt position, and they were hopeful that January 1st we could come into compliance. So, they will be awaiting those findings, which they're still awaiting, and I have to report back to them whether we have complied or not." (ROR Tr. 86). However, from the record it was clear Ms. Larson is not in agreement and instead of finalizing the status to comply with the DOL she stated, that she "wanted actual documentation of whether or not it was exempt, not exempt, all of that stuff, to actually really have it spelled out, that I should go resurrect my complaint, which I had dropped when I found out that the Department of Labor could not do anything because the stipend we're in. And I just – this is—this part here someone has a misunderstanding." (ROR Tr. 86). Thus, Ms. Larson indicates she will be proceeding without permitting the town to establish a position in compliance. Her indication that the salary is stipend is in fact incorrect because the town had agreed early on to an increase for Ms. Larson (ROR Tr. 23 to 25) and upon involvement of the DOL to an hourly sum of $15.00 per hour. This continued defiance was likely to subject the Town to findings of non-compliance with associated penalties. Ms. Larson argues that the Town could address the findings by also reclassifying her and providing a salaried position but this was within the discretion of the Town and Ms. Larson continued to advocate for her proposed increased salary. The Board argues that this continued untenable position will cause harm and that without the resolution Ms. Larson has abandoned the position because there is no DOL recognized position and thus it is a violation of the law, Given this approach by Ms. Larson, the Board's final

decision to affirm dismissal is not arbitrary, illegal or an abuse of discretion. These concerns are not a reason to find that the Board acted in an unfair, predetermined, and illegal manner. Add to these concerns the history noted in the record of refusal to provide a work log like all other town employees or to follow orders about receiving protective equipment before appearing at fires, refusing to schedule the number of office hours as requested by the First Selectman, improperly reading regulations and standards which led to the near closing of the town Senior center, the failure to follow the budget process which allowed for protective equipment and instead filing a complaint with the State which again led to an investigation. Mr. Lowe summarized his interaction with the plaintiff as "[B]esides a pattern of erratic behavior, unreliable information provided by her, and insubordination behavior, refusal to follow directions, besides the three aspects of this, primarily we're here because ... this employee's refusal to sign a reclassification agreement which would put us out of compliance." (ROR Tr. 14).

The transcript of the hearing demonstrates very clearly the animosity not of the Board but of the plaintiff in regard to each of the reasons for the dismissal. In response to each of the reasons for dismissal Ms. Larson either denies the statement or indicates she has followed the request or concerns of the Board. For instance, when the plaintiff discusses the office hours requested, instead of following the mandates of the First Selectman she made a choice to do only 2 hours rather than the 4 hours requested. This decision by Ms. Larson led to the issuance of a Written Warning on November 16, 2018 (Exh. H). In response to the concern about her actions to cite the senior center for what she contended were safety issues related to fire safety, it was clear she not only cited the wrong regulation but she without listening to the concerns and statements about her improper citations went forward with a report that could certainly have caused substantial harm.

Within a short time after being appointed, the record demonstrates that the appellant began a campaign to change the salary which had been a part of the position. Ms. Larson advocated for additional funds and cited to other towns in support of this request. (ROR Tr. 110, Ex. B)[7]

Ms. Larson includes in her memorandum suggestions she has heard from several people that a mediation may have prevented some of the problems or may assist in addressing the issues to "get things smoothed out." (Appellant's memorandum at 10). The use of mediation is not a method or process that is part of the administrative appeal before the court but is left to the parties if they agree to take part. There does not appear to be any movement in this direction and thus the comments are irrelevant.

The only remaining issue is whether the record with the testimony and exhibits supports the decision of the Board of Selectman to dismiss the plaintiff for failing to faithfully perform the duties of fire marshal. In the hearing before the Board, they addressed each of the eight areas of insufficiency and deficiency of the plaintiff in her performance and behavior as fire marshal. As noted, in the above discussion and a review of the record, the Board has included within the record a clear basis for dismissal.

CONCLUSION

At the conclusion of the hearing the Board voted unanimously to dismiss the plaintiff. The review of the record as a whole demonstrates not only a clear discord between the plaintiff and the town official who oversees her work but instances of improperly applying the law and obvious lack of attention to understanding the oversight of the town directives, the careful review of the budget, and the proper application of the regulations for violations such as the Senior Center. Throughout the hearing the plaintiff chided the First Selectman for interrupting her. Although there were demonstrated direct requests to Ms. Larson for establishing office hours, providing a work log, refrain from attending fire scenes without protective clothing, meeting to establish and agree upon pay and classification, there was a consistent resistance and a response that she was the person who made choices because she was the fire marshal in accordance with C.G.S. Sec. 29-299. There was continual non-compliance with the requests or directives to the plaintiff and the failure to attend the meeting to address the DOL agreement leaves the town with a serious deficit.

***6** For all of the above reasons, the decision of the town of Sherman after a hearing to dismiss Sarah Beth Addison Larson as the fire marshal is affirmed.

All Citations

Not Reported in Atl. Rptr., 2023 WL 370964

Footnotes

1 This complaint was made although the Board included funding for the protective equipment that the plaintiff requested in her budget. (ROR Ex. D)

2 There was also a submission during the hearing in which the town instructed Ms. Larson to "not exceed 18 hours in any given week without authorization ..." (ROR Ex. H)

3 During the hearing before the Board the plaintiff acquiesced to some of the changes but continued to argue that the DOL did not require her to be non-exempt. (ROR Tr. 86)

4 This includes the opportunity to present evidence and witnesses and to examine the complaint and any individuals presenting testimony or evidence.

5 The third member is Don Lowe who was the First Selectman. Thus, the majority would require more than just Mr. Lowe to vote for dismissal.

6 There was testimony from Don Lowe that the town had increased the salary of the plaintiff to $10,000 in 2018 and thereafter a proposed raise to $14,000 to which she expressed displeasure.

7 As noted above there were increases in salary given or negotiated with the plaintiff.

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