STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

CHRO ex rel. Dawn Wynkoop, Stephen Warner, James Brule, Douglas Eitelman, David Sloman, Complainants	CHRO No. 0840008, 0840031, 0840032, 0840162, 0840263
v.	
NERAC, Inc., Respondent	August 8, 2012

FILED/RECEIVED @ CHRO - OPH
2012 AUG -8 A 10: 55
RECEIVED BY/FILED WITH

ARTICULATION ON THE RULING OF RESPONDENTS' MOTION FOR RECONSIDERATION

PRELIMINARY STATEMENT

The above captioned cases were filed over three years ago. These cases were in various stages of pre-hearing procedure. A number of them were prepared and ready to be heard at a public hearing. Due to the period where there were not any Human Rights Referees to hear cases, from June 30, 2011 to December 2012, the proceedings were put on hold. I was assigned this group of cases in March of 2012. A status conference with the parties was held on April 5, 2012 where a new hearing schedule was ordered. It was agreed at this time that the main body of pre-hearing preparation had been completed

The complainants filed a Motion to Compel on July 10, 2012. The Motion to Compel was denied in part and granted in part on July 19, 2012. On July 27, 2012, the respondents' filed a Motion for Reconsideration of this tribunal's ruling on the complainants' Motion to Compel. The Motion for Reconsideration contained three requests: 1. a request to narrow the scope of discovery ordered in my ruling on complaints' Motion to Compel; 2. a request for an extension of time; and 3. a request for a status conference. Respondents' Motion was granted with respect to their extension of time and conference request. A telephonic conference with the parties was held on August 2, 2012. During the conference the respondent's request for a time extension, to reschedule new hearing dates and extend the time frame for compliance was granted.

Additionally, during this telephonic conference I orally denied the request to further narrow the scope of discovery in respondents' motion for reconsideration. It was further agreed that these cases would be tried simultaneously to avoid unnecessary duplication of work during the hearing. As such this ruling applies to all 5 of the above

captioned cases. (NERAC). During that conference a discussion was held off the record and the respondents requested that I articulate my oral ruling, **granting in part and denying in part**, the respondents' Motion for Reconsideration.

General Statutes § 4-177c provides in relevant part: "(a) In a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the general statutes.

The information sought in discovery is permissible if it is of assistance in the prosecution of the action, can be provided by the disclosing party with substantially greater facility than it could otherwise be obtained by the party seeking disclosure and if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Practice Book § 13–2. "The right of a litigant to discovery is primarily the right to obtain information." *Chief of Police v. Freedom of Information Commission*, 52 Conn.App. 12, 16, 724 A.2d 554 (1999), aff'd, 252 Conn. 377, 746 A.2d 1264 (2000). "The discovery rules ... are designed to make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practical extent." (Internal quotation marks omitted.) *Knock v. Knock*, 224 Conn. 776, 782, 621 A.2d 776 (1993).

"What is in issue is determined by the pleadings and, once they have been filed, the evidence proffered must be relevant to the issues raised in the pleadings." (Internal quotation marks omitted .) *KMK Insulation, Inc. v. A. Prete & Son Construction Co.,* 49 Conn.App. 522, 527–28, 715 A.2d 799 (1998). Practice Book § 13–2, however, liberally permits **discovery** of information "material to the subject matter involved in the pending action," which certainly includes a **broader** spectrum of data than that which is material to the precise issues raised in the pleadings. *Lougee v. Grinnell,* 216 Conn. 483, 489, 582 A.2d 456 (1990), overruled in part on other grounds by *State v. Salmon,* 250 Conn. 147, 154–55, 735 A.2d 333 (1999) (en banc).

DISCUSSION

Respondents argue that they did not have a full 14 days to object to the complainants' Motion to Compel and that their objections were not heard. However, on June 21, 2012 the respondents filed their objections to complainants' request for production. This tribunal made its ruling on complainants' Motion to Compel based on respondent's objections to the initial production requests. The Motion for Reconsideration did not furnish additional information to what had previously been provided in the respondents' objections. Moreover, during the conference held on

August 2, 2012 respondent had the opportunity to voice and discuss their objections further.

The information requested "is discoverable if it appears "reasonably calculated" to lead to admissible evidence, the scope of inquiry permitted during discovery clearly exceeds the boundaries of admissible evidence. *Sanderson v. Steve Snyder Enterprises, Inc.*, 196 Conn. 134, 139, 491 A.2d 389, 392 (1985). As our Supreme Court has observed, CFEPA "defines important rights designed to rid the workplace of discrimination...." *Sullivan v. Board of Police Commissioners*, 196 Conn. 208, 216, 491 A.2d 1096 (1985); see also Commission on Human Rights & Opportunities v. Board of Education, 270 Conn. 665, 694, 855 A.2d 212 (2004). "As such, the act is composed of remedial statutes, which are to 'be construed liberally to effectuate their beneficent purposes.' *Civil Service Commission v. Trainor,* 39 Conn.Supp. 528, 532, 466 A.2d 1203 (1983); see also *Larsen Chelsey Realty Co. v. Larsen*, 232 Conn. 480, 492, 656 A.2d 1009 (1995) (remedial statutes are to 'be liberally construed in favor of those whom the legislature intended to benefit'*)." Commission on Human Rights & Opportunities v. Truelove & Maclean, Inc.*, 238 Conn. 337, 355, 680 A.2d 1261(1996).

Respondent's objected to many of complainants' requests as being "unreasonably overly broad, unduly burdensome and/or wholly unrelated to this case." "When a party asserts an objection of "unduly burdensome," it must "do more than simply intone [the] familiar litany that the [requests] are burdensome, oppressive or overly broad."(Citations and internal quotation marks omitted.) *Culkin v. Pitney Bowes, Inc.*, 225 F.R.D. 69, 70-71 (D.Conn. 2004). Instead, the objecting party must demonstrate specifically how compliance with the request would be overly burdensome. *Id.,* 71; see also *Gabriele v. Federal Insurance Company*, 2008 WL 2808776, *1 (D.Conn.)." In any event, production of the requested documents should not be burdensome to any employer who retains comprehensive and well-organized records." *Kevin Langan, Complainant v RCK Corporation, dba J.P. Dempsey's, Respondent,* 2009 WL 281168 (CT.Civ.Rts.)

Complainants' requests for employee records regarding hiring, layoffs, and insurance claims, over an 8 year time span, where the allegations pertain to age and gender discrimination would be reasonably calculated to lead to evidence of a pattern or pretext, liability and damages. The requested insurance records are especially relevant when the allegations contain a charge of discrimination, by utilizing the cost of employee's insurance, as a factor in complainants' terminations. Likewise information with regard to the employee stock option plan is reasonable calculated to lead to information on age discrimination in terms of vesting, amount of damages and ownership. This articulated ruling supports my oral ruling of August 2, 2012, on respondents' Motion for Reconsideration and is GRANTED in part and DENIED in part.

It is so ordered this 8th day of August 2012.

The Honorable, Michele C. Mount,
Presiding Referee

cc.

Douglas Eitelman
Cheryl Sharp, Esq.-via fax
Francis Gleason, Esq.-via fax
Victoria Chavey, Esq.-via fax
Genea Bell, Esq.-via fax