

Judicial District of New Britain
SUPERIOR COURT
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CYNTHIA A. SKORZEWSKI
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JAMES L. CETRAN : SUPERIOR COURT
v. : JUDICIAL DISTRICT OF NEW BRITAIN
TOWN OF WETHERSFIELD : MAY 29, 2024

MEMORANDUM OF DECISION

The plaintiff James L. Cetran served the defendant Town of Wethersfield (town) as a police officer for almost forty-eight years. He rose through the ranks, becoming chief of the Wethersfield Police Department (department) in 2003. His last year in that office, however, was not a happy one, due to differences between him and then town manager Gary Evans.

Those differences led to Mr. Evans' placing Chief Cetran on paid administrative leave in November 2020, based on the former's disagreement with the latter's handling of a grievance filed by an officer in the department. The chief remained on leave until January 18, 2021, when he returned to work under the terms of a "retirement agreement" (agreement) executed by the parties on January 13, 2021. In this case Chief Cetran seeks damages for the town's alleged violations of two provisions of that agreement.

The case was tried to this court on November 29 and 30 and December 7 and 13, 2023. Both Chief Cetran and Mr. Evans testified

*5/29/2024 - JDVO sent to RJD, Atty Rachel Baird, and Halloran, Sage LLP.
J. Ferrico, AC*

at length; so, the court had ample opportunity to assess their credibility and the weight to be accorded their testimony. Additional witnesses gave testimony that provided context and background for the relevant events.

I

The parties' agreement was intended "to address issues involving Chief Cetran's retirement from the Wethersfield Police Department. . . ." Exhibits 1 & A, p. 1. In paragraph one of the agreement Chief Cetran agreed to provide the town manager and the town council with written notice of his retirement, effective August 31, 2021, and to provide that notice on or before January 23, 2021. Id.

On February 6, 2021 Chief Cetran provided the written notice of his intent to retire, effective August 31, 2021, that was required by the first paragraph of the agreement. Exhibit 3. On May 14, 2021, however, he rescinded that notice by way of an email to Mr. Evans. Exhibits 7 & E ("I hereby rescind/withdraw my February 6, 2021 notice of intention to retire. I look forward to continuing to serve as the Chief of Police for the Town of Wethersfield.")

In paragraph two of the agreement the parties "acknowledge that Chief Cetran shall continue as Chief of Police and in accordance with satisfactory compliance with the requirements of law enforcement, federal, state and local laws, and the Wethersfield Town Charter, including Section 602(a)." Exhibits 1 & A, p. 2.

Of particular importance to this litigation is the following language in paragraph two:

Accordingly, Chief Cetran shall continue to address disciplinary, union, personnel, and other operational issues, in accordance with labor rules and laws and past practices. Any promotions made by Chief Cetran shall be in accordance with past practices and laws which shall be in accordance with testing and probationary requirements. Chief Cetran shall keep the Director of Public Safety timely apprised of said actions.

Count 1 of the complaint alleges that the town, in the person of Mr. Evans, violated this provision of the agreement by interfering with Chief Cetran's authority to fill the open position of lieutenant, carrying on "unprofessional communications" with Sergeant Luis Gonzalez, Chief Cetran's subordinate, and by demeaning the chief to his subordinates in the department. Revised Complaint, Count 1, ¶¶ 13-15, 32 (docket entry #105, May 25, 2022).

Other provisions of the agreement dealt with Chief Cetran's retirement benefits, specified that the agreement "shall not constitute precedent or establishment of any past practice for the settlement of any future claims," stated that the agreement constituted the "complete understanding" between the parties and that, if any provision of the agreement should be held "invalid or unenforceable by any court," such holding would not render any other provision invalid or unenforceable.

The agreement concluded with the following stipulation:

This Agreement is to be construed according to the laws of Connecticut. The Parties agree that any claim or dispute arising out of a breach of this Retirement Agreement shall be adjudicated in state or federal court within the State of Connecticut and hereby consent to the exercise of personal jurisdiction of any such court having subject matter jurisdiction of the claim or dispute.

In count 2 of his complaint Chief Cetran alleges that the town violated this provision of the agreement by dismissing him from his position as chief of police for "just cause," pursuant to Conn. General Statutes 7-278¹, when he withdrew the notice of intent to retire, "instead of submitting its claim of breach for

¹ "No active head of any police department . . . shall be dismissed unless there is a showing of just cause by the authority having the power of dismissal"

adjudication in a Connecticut state or federal court,". Revised Complaint, Count 2, ¶ 13 (docket entry #105, May 25, 2022).

In his complaint and at trial Chief Cetran maintained that he was justified in withdrawing his notice of intent to retire because Mr. Evans had "breached paragraph 2 of the Agreement by interfering with Cetran's ability to address disciplinary, union, personnel, promotions, and other operational issues in the police department." Revised Complaint, supra, count 1, ¶9.

On June 9, 2021 Mr. Evans, as town manager, responded to the chief's rescission of his notice of intent to retire with a "Notice of Intent to Dismiss from Office Pursuant to Connecticut General Statutes 7-278." Exhibits 11 & F (dismissal notice). The "specific grounds at issue" were identified as "Breach of Retirement Agreement dated January 13, 2021 by Chief James Cetran." Id., p. 1. The dismissal notice recited the process by which the agreement had been reached, Chief Cetran's giving of the notice of intent to retire and his subsequent rescission of that notice, and the town's efforts in the interim to conduct a search for the chief's successor. It alleged that Chief Cetran's conduct in rescinding his notice of intent to retire violated certain "General Orders" having to do with the "deportment and appearance"

of employees of the department, employee "misconduct" and "disobedience of orders" and "conduct unbecoming an officer." Id., p. 3. The dismissal notice concluded, "By sending his May 14th email, in violation of the binding agreement between he and the Town, Chief Cetran has engaged in conduct constituting 'just cause' for his dismissal. Specifically, Chief Cetran's conduct as outlined above constitutes an unlawful breach of the terms of the January 13, 2021 Retirement Agreement mutually negotiated and executed by Chief Cetran, who was represented by legal counsel throughout these negotiations, and the Town of Wethersfield." Id., p. 4.

As required by § 7-278, a public hearing was held by the town council, the "authority having the power of dismissal," on June 15, 2021. By a vote of the council Chief Cetran was terminated as chief of police, effective June 16, 2021.

II

Chief Cetran claims that the town breached its agreement with him. In order to recover on this breach of contract claim Chief Cetran must prove the formation of an agreement with the town (which is undisputed), that he performed his obligations under the agreement, that the town failed to perform its obligations under

the agreement and that, as a result of the town's breach, Chief Cetran suffered damages. *Keller v. Beckenstein*, 117 Conn. App. 550, 558, cert. denied 294 Conn. 913 (2009).

III

Chief Cetran's claim that the town breached paragraph two of the agreement consists of three elements: first, Mr. Evans' alleged interference in the process for filling a vacant lieutenant's position in the department; second, Mr. Evans' alleged interference in the chief's authority to administer the department by carrying on "unprofessional communications" and communications demeaning of the chief with Sergeant Luis Gonzalez; third, Mr. Evans' alleged reversal of the chief's discipline of Sergeant Gonzalez for inappropriate actions as a firearms training instructor.²

In considering the issues raised by these allegations, it must be noted that section 2 expressly provided that Chief Cetran's return to office was to be "in accordance with . . . the Wethersfield Town Charter, including Section 602(a)." That section

² While the third of these claims, Mr. Evans' alleged reversal of the chief's discipline of Sergeant Luis Gonzalez, was not alleged in the complaint, evidence bearing on that issue was introduced at trial without objection.

designates the town manager as the director of public safety and specifies that the police chief's actions as the "executive officer" of the department are "subject to the approval of the Director of Public Safety." Exhibit T. The court rejects the chief's argument that the agreement "provided Cetran more authority than the Charter," apparently relying on section 2's language requiring the chief to keep the director of public safety "timely apprised of said actions [by the chief]." Plaintiff's Post-Trial Reply Brief, p. 3, docket entry #143 (March 11, 2024). Rather, the court finds that the latter language of the agreement was meant to reinforce the town manager's supervisory authority over the chief by requiring the chief to apprise the manager of his actions so that the manager could approve or disapprove of those actions, as provided for in the town charter.

When Chief Cetran returned to office in January 2021, there was a vacancy in a permanent lieutenant position. The chief was anxious to fill it. Mr. Evans approved the selection method recommended by the chief for filling the position. Mr. Evans, however, having a broader view of the town's personnel needs, determined that there were other vacancies, the filling of which was more critical, and directed the newly-hired human resources

director to give priority to those positions. Chief Cetran testified that he saw this as interference with his ability to make promotions, which had been specifically preserved in section 2 of the agreement. The human resources director testified credibly, however, that Mr. Evans never told her to slow down the promotion process. Giving priority to filling other town positions was intended to meet the town's broader personnel needs, as identified by the town manager. The chief's ability to make promotions, as spelled out in section 2 of the agreement, was to be "in accordance with past practices and laws which shall be in accordance with testing and probationary requirements." Past practice for filling such positions had included the involvement of the human resources department. So, Mr. Evans' insistence on its involvement in the lieutenant promotion was in accordance with and not in opposition to past practice.

Prior to Chief Cetran's return to office in January 2021 and to a more limited degree thereafter, Mr. Evans engaged in text communications with Sergeant Luis Gonzalez which can most charitably be described as "unprofessional." They evidence a jointly held unfavorable opinion of Chief Cetran. There was no evidence, however, that these communications had any adverse

effect on the chief's ability to run the department. Nor was there any evidence that Mr. Evans engaged in similar communications with other members of the department. The exchange of these texts between Mr. Evans and Sergeant Gonzalez does not constitute a violation of the agreement on the part of the town.

Then there is the matter of Sergeant Gonzalez's discipline for inappropriate actions by him vis-a-vis female officers while the sergeant was acting as a firearms instructor. The complaint was made and an internal investigation commenced in 2020. After Chief Cetran returned to office under the terms of the agreement, he met with the investigating officer. That officer recommended that Sergeant Gonzalez be disciplined by undergoing mandatory counseling and that the two complaining officers be disciplined as well. Chief Cetran declined to accept the recommendations, instructing the investigating officer to remove his recommendation that the complaining officers be disciplined and supplementing Sergeant Gonzalez's discipline with a one-year suspension as a firearms instructor.

Sergeant Gonzalez grieved the one-year suspension. Chief Cetran was step one of the grievance process, and he denied the grievance. Mr. Evans, as director of public safety and the chief's

superior, was step two of the process. Initially, he declined to uphold the chief's suspension of Sergeant Gonzalez. The court finds that Mr. Evans' action in doing so was in keeping with the agreement's stipulation that Chief Cetran's actions as chief of police were to be "in accordance with . . . the Wethersfield Town Charter, including Section 602(a)," and not a violation of the agreement. Moreover, after the chief voiced his objection and after one of the complainants expressed her disagreement with Mr. Evans' action, he reinstated the chief's original recommendation of a one-year suspension of Sergeant Gonzalez as a firearms instructor.

In short, Mr. Evans' original rejection of the chief's recommended discipline was not a violation of the agreement, and his final reinstatement of that recommendation demonstrated that he had no intention of undermining Chief Cetran in his running of the department.

Chief Cetran has failed to prove his allegation that the town breached section 2 of the agreement by a preponderance of the evidence, i.e., that it is more likely than not that Mr. Evans' actions constituted the interference with the chief's ability to

administer the operations of the department forbidden by the agreement.

IV

The court might be prepared to agree with Chief Cetran that the town's resort to the removal process provided for in § 7-278 to discipline him for his "Breach of Retirement Agreement dated January 13, 2021"; Exhibits 11 & F, Notice of Intent to Dismiss from Office, p. 1; constituted a violation of section 7 of the agreement. That section required that "any claim or dispute arising out of a breach of this Retirement Agreement shall be adjudicated in state or federal court" Exhibits 1 & A, p. 3.

The point is moot, however, in view of the chief's inability to prove that he performed his obligations under the agreement, a necessary element of a claim for breach of contract. *Keller v. Beckenstein*, supra, 117 Conn. App. 558. The chief's obligation was to retire as of August 31, 2021, unless the town and he agreed to extend his service beyond that date. Exhibits 1 & A, p. 1. The evidence is clear that Chief Cetran had formed an intention not to retire as of August 31, 2021 and so informed Mr. Evans on May 14, 2021. Exhibits 7 & E.

"An anticipatory breach of contract occurs when the breaching party repudiates his duty before the time for performance has arrived. . . . Its effect is to allow the nonbreaching party to discharge his remaining duties of performance, and to initiate an action without having to await the time for performance. . . . The manifestation of intent not to render the agreed upon performance may be either verbal or nonverbal . . . and is largely a factual determination in each instance." (Internal citations omitted.) *Pullman, Comley, Bradley & Reeves v. Tuck-It-Away, Bridgeport, Inc.*, 28 Conn. App. 460, 465, cert. denied 223 Conn. 926 (1992).³

There could be no more definitive evidence of Chief Cetran's "intent not to render the agreed upon performance" than his email to Mr. Evans of May 14, 2021: "I hereby rescind/withdraw my February 6, 2021 notice of intention to retire. I look forward to continuing to serve as the Chief of Police for the Town of Wethersfield." Exhibit E. Under cross examination on November 29,

³ The town initiated a counterclaim in this litigation, seeking damages for Chief Cetran's breach of the agreement by withdrawing his notice of intent to retire. Defendant's Answer, Special Defenses, and Counterclaim to Plaintiff's Revised Complaint, docket entry #110 (July 1, 2022). In the course of the trial on Chief Cetran's complaint counsel for the town advised the court that it did not intend to pursue its counterclaim.

2023 Chief Cetran agreed that his withdrawal of the notice of his intent to retire was a breach of the agreement. The effect of the chief's breach was to relieve the town of its obligations of performance; e.g., its obligation to bring any claim of breach on the chief's part to the courts rather than to pursue his discharge under § 7-278.

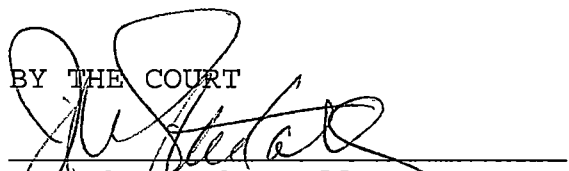
Because of his anticipatory breach of the agreement, Chief Cetran may not recover for the town's bypass of the court process mandated in section 7 of the agreement in favor of the "just cause" dismissal route provided for in § 7-278.

V

JUDGMENT ENTERS for the defendant town of Wethersfield on counts 1 & 2 of the revised complaint.

The town's counterclaim is DISMISSED with prejudice.

BY THE COURT



Joseph M. Shortall
Judge Trial Referee