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SUPERIOR COURT

FBTCV206094937S 2025 NOV 10 P 12:43 CONNECTICUT SUPERIOR COURT
MAGALIE SEMEXANT-COFFY L DISTRICT OF BRIDGEPORT JUDICIAL DISTRICT OF BRIDGEPORT
VS. : AT BRIDGEPORT
STATE OF CONNECTICUT : November 10, 2025

MEMORANDUM OF DECISION

This is a lawsuit in which the key/central events occurred approximately 8-10 years ago. The plaintiff, employed by the defendant¹ as a housing specialist (often referred to as a mediator) was terminated from employment, based on events in that 8-10 year ago time-frame. The termination eventually was overturned by a lengthy and detailed decision of an arbitrator, pursuant to the contractual grievance procedure available to the plaintiff. What remains is the plaintiff's claim that her termination was the result of – retaliation for – statements she made relating to her supervisor, and the plaintiff seeks compensation from the defendant on that basis.

The controlling principles are established by the statute creating the specific cause of action being asserted by the plaintiff. General Statutes § 31-51q provides in relevant part:

"Any employer, including the state and any instrumentality or political subdivision thereof, who subjects any employee to discipline or discharge on account of the exercise by such employee of rights guaranteed by the first amendment to the United States Constitution or section 3, 4 or 14 of article first of the Constitution of the state, provided such activity does not substantially or materially interfere with the

¹ At earlier stages of the dispute between the parties (administrative level), the defendant – plaintiff's employer – had been identified as the Judicial Branch of the State of Connecticut. In this litigation, the plaintiff has sued both the State of Connecticut and the Judicial Branch of the State of Connecticut. As there is no functional distinction between the two named defendants for purposes of this proceeding, the court will refer to the singular "defendant."

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employee's bona fide job performance or the working relationship between the employee and the employer, shall be liable to such employee for damages caused by such discipline or discharge, including punitive damages, and for reasonable attorneys fees as part of the costs of any such action for damages."

As applied by our courts,

"Constitutionally protected speech has been defined as, speech that addresses a matter of public concern. In order to make such a determination, a court may look to the motivation for the speech, and simply because such speech touches on an issue of public concern, will not render that speech protected where the employee's motive for the speech is private and personal." (Internal quotation marks and citations, omitted.) *Gillies v. Ridgefield Academy, Inc.*, Docket No. CV040352567S, 2005 Conn. Super. LEXIS 555, at *3 (Super. Feb. 18, 2005).

As set forth in a different but analogous situation

"In order for a plaintiff to prevail on a claim of retaliation under General Statutes 46a-60 (a) (4), he must initially establish a prima facie case by showing that (1) he participated in a protected activity, (2) the defendant knew of the protected activity, (3) he was subject to an adverse employment action, and (4) there was a causal connection between his protected activity and the adverse action. The causation element can be proven (1) indirectly, by showing that the protected activity was followed closely by discriminatory treatment, or through other circumstantial evidence such as disparate treatment of fellow employees who engaged in similar conduct; or (2) directly, through evidence of retaliatory animus directed against the plaintiff by the defendant. . . . Alternatively, causation may be satisfied by showing a sufficiently close temporal connection between the protected activity and the adverse action" *Jones v. Dept. of Children & Families*, 172 Conn. App. 14, 35, 158 A.3d 356 (2017).

(The difference, of course, is that General Statutes § 31-51q addresses a specific protected activity, and imposes conditions relating to the employer-employee relationship.)

Discussion

Perhaps optimistically, most people try to comply – at least substantially – with the laws governing their conduct (to the extent those laws are understood). Of course, “everyone” substantially exceeds the posted speed limit, “everyone” takes some liberties with their tax returns, “everyone” leaves early from work on the afternoon prior to a holiday weekend, etc. That “everyone” may not obey the law in some strict sense is not a defense to a claim that a particular individual did not obey the law. (It may lead to a claim of disparate or arbitrary treatment, but this statutorily-based proceeding is solely about retaliatory conduct.)

Large organizations, especially those readily characterized as bureaucracies, have the problem of dealing with individuals who seek or deserve or claim to deserve customized treatment, while being fair to all employees – with the risk of establishing precedents for how all employees should be treated if exceptions are made or tolerated. There is an overlay of the reality that different supervisors have different management styles, and subordinates may resist or have difficulty in complying with modified expectations established by a new supervisor.

The plaintiff began regular employment by the defendant around 2000, essentially working as a housing mediator or housing specialist, functionally assigned to the Housing Session of the Superior Court. Historically, what is now the Judicial District of Bridgeport and the Judicial District of Stamford/Norwalk have “shared” a

Housing Judge, and personnel such as the plaintiff likewise would split time between the two Districts.

The plaintiff reportedly has had family-related issues, requiring (from her perspective) some level of flexibility and accommodation in her work schedule. She claims that she substantially complied with the requirements relating to adjustments to her schedule and often was unable to contact a supervisor who needed to be informed – in advance, if possible – of the need for some adjustments to her schedule. These situations had not been of particular concern (expressed concern) of the plaintiff's supervisor in the period leading up to 2015-16, but in 2015-16, there was a transition in supervision from Ms. Texeira to Ms. Palmer – initially on an interim basis and then on a permanent basis. At the time of this transition, Ms. Palmer already had a supervisory role with respect to the operation of housing mediators and other functions; she became a direct supervisor of the plaintiff in that 2015-16 time-frame.² As relevant to this matter, it is clear that Ms. Palmer had a different management style than Ms. Texeira, requiring stricter adherence to rules pertaining to attendance.

The focus of this action is that the plaintiff eventually was terminated from her employment. By way of a contractual grievance procedure, an arbitrator determined that the penalty of termination had to be reversed, such that the plaintiff was reinstated to her employment. She then commenced this action, claiming that the

² In 2015, Ms. Palmer was assigned some level of managerial responsibility over the plaintiff (Exhibit F), with Ms. Texeira continuing to have direct managerial responsibility. In 2016, the personal situation for Ms. Texeira resulted in a leave of absence during which Ms. Palmer became the overall supervisor for the plaintiff on an interim basis, and eventually when Ms. Texeira ceased employment by the defendant, Ms. Palmer took over supervision of the plaintiff on a permanent basis. It appears to be essentially undisputed/undisputable that the management style of Ms. Palmer was different than the style of Ms. Texeira; Ms. Texeira seems to have had a far more relaxed approach to adjustments in attendance of housing mediators.

termination of her employment had been in retaliation for certain complaints she had made about Ms. Palmer

The operative complaint is the revised complaint dated July 2, 2021 (#112.00), asserting a claim based on claimed violation of "Connecticut General Statutes Section 31-51q section 3, 4 and/or 14 of Article First of the Constitution of the State of Connecticut." As already quoted, the relevant portion of § 31-51q(b) provides:

(b) [A]ny employer, including the state ... who subjects or threatens to subject any employee to discipline or discharge on account of (1) the exercise by such employee of rights guaranteed by the first amendment to the United States Constitution or section 3, 4 or 14 of article first of the Constitution of the state, provided such activity does not substantially or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer, shall be liable to such employee for damages caused by such discipline or discharge, including punitive damages, and for reasonable attorney's fees as part of the costs of any such action for damages...."

The defendant has filed an answer and has alleged several special defenses.

For something of context, the evidence established that the housing court dockets had high volumes of cases, with most of the work/attention by personnel such as the plaintiff required in the morning, before and shortly after the court officially opened to hear cases. The evidence clearly established a justified concern about attendance and especially arriving in a timely manner in the morning.

The court has difficulty with the plaintiff's characterization of her termination as retaliatory, on a number of levels.

Assuming there to be proof relating to complaints about the attendance practices of Ms. Palmer, there is no serious suggestion or competent/credible

evidence that she played any role in determining the disciplinary consequences of the plaintiff's attendance issues. She reported or confirmed the existence of attendance issues, but the evidence was reasonably clear and persuasive that she played no role in determining the consequences, if any, of the plaintiff's attendance issues. Conversely, a persuasive and pervasive aspect of this matter is that the plaintiff's disciplinary issues did not start as a result of any action by Ms. Palmer but instead had been triggered by the plaintiff's own conduct – repeatedly entering a courthouse well after normal business hours – triggering an investigation that included review of the plaintiff's times of entry to work facilities. The earliest claimed exercise of her right to free speech was identified as occurring approximately a full year after the investigatory process commenced (with defendant's personnel – other than Ms. Palmer – attributing the length of the process to a backlog of work).

The above provides an appropriate segue to an underlying question of the extent to which the plaintiff actually made statements relating to Ms. Palmer's alleged fraudulent or otherwise improper practices relating to her attendance, with a necessary focus on statements made to those in a position to make the decision to terminate the plaintiff's employment. There is no documentation of any statement made by the plaintiff or anyone on her behalf to anyone in an administrative position, especially prior to January 2017 when the final steps were being taken to impose the second level of discipline on the plaintiff resulting in her termination. Mr. Lucas, assigned responsibility for investigation of charges such as this, had a practice of keeping notes of interactions with the individual being investigated and witnesses; he had no notes of any contention by the plaintiff that she had accused Ms. Palmer of fraudulent or theft-like conduct relating to her attendance, or anything that might be construed as such. A number of administrative officials did not recall any such statements by the plaintiff; although that readily could be attributable to the number

of years that had elapsed, the consistency of that lack of any recollection, and lack of any records or notes of such statements, is perceived of probative of the absence of any such statement.

The only note of Mr. Lucas relating to this issue was that in connection with the January 2017 meeting with the plaintiff's union representatives, a union representative was noted as having made a statement in that vein. While not conclusive, it is suggestive that the type of comment was deemed noteworthy, but it was only reported as having been made by a union representative – and likely perceived as a negotiation tactic.

Conversely, prior to trial, the plaintiff consistently had insisted that she had made statements to defendant's personnel – presumably, managerial level personnel – in the course of meetings in November 2016 and January 2017. Exhibit R, a notice relating to the scheduling of the hearing on November 15, 2016, contains a handwritten notation by Ms. Rooney, the author of the notice. The notation states: "never met with employee. Discussed with Chip in my office. Stip signed." (Chip apparently was a Union-provided representative for the plaintiff.)³ It seems highly implausible that the plaintiff would have had an opportunity to talk to defendant's managerial personnel in the context of a meeting that did not go forward – and it would seem unlikely that the plaintiff would have been speaking to defendant's personnel in the absence of a Union representative under such circumstances.

As to the claimed statements in January, again, Mr. Lucas kept notes, and the only statement on the topic of Ms. Palmer's alleged attendance issues that he noted came from a Union representative. In her reply, the plaintiff seems to treat as

³ The arbitration decision also reports that there was testimony that the meeting never took place.

interchangeable the concept of a statement by a union representative and a statement by an employee – perhaps interchangeable from the perspective an employer-employee relationship governed by collective bargaining, it is at least a bit of stretch to claim that a statement by a union representative presumptively is an exercise of free speech by a represented employee, for purposes of this statute.

On a more practical level, the court has reservations as to whether a defensive “she does it too” (directed to claimed conduct of Ms. Palmer) would be perceived as an affirmative claim of wrongdoing so as to be reasonably characterized as the type of speech sought to be protected by the statute. The court is hesitant to rely on the characterization of such a statement as part of a dispute that is inherently not within the scope of the statute, but the ability to bootstrap a defensive “she does it too” into a cause of action based on the right of free speech, seems to be testing the elasticity of the statute’s range of application.

Further, the court finds the attempt to claim that “she does it too” likely had an impact on the decision to terminate her employment to be not credible. The plaintiff overreached in her efforts to find “she does it too” conduct. One extreme is that she relies, in part, on reference to Ms. Palmer having brought a child to work as part of her claims of misconduct by Ms. Palmer – but that was established likely to have been in or before 2008, some seven years prior to the events of concern (although it was at a time when Ms. Palmer held a position comparable to that of the plaintiff).

Conversely, all of the conduct supposedly more contemporaneous was at a time when Ms. Palmer had managerial-level positions. There was a detailed exploration of claimed irregularities in her attendance records during the arbitration proceeding. As pointed out, a number of instances were signing in five or fewer minutes late, which generally would not be considered to be late given a policy

allowing for such minor deviations from attendance requirements.⁴ Notably undisputed was Ms. Palmer's assertion that she had obtained approval from her superior(s) to make up time by staying late. The court has little trouble accepting the general concept that managerial personnel often if not generally are not subject to the same level of formality with respect to attendance, given the differing nature of responsibilities. There is no explanation of why he considered trivial late entries of Ms. Palmer when there were no claims of similar trivial late entries by the plaintiff relating to her disciplinary charges. There is no explanation of why he noted but did not seem to give any weight to the undisputed statement of Ms. Palmer that she obtained approval from her supervisor to make up time by staying late.

The arbitrator seemed to recognize some level of required distinctions, identifying his understanding of Ms. Palmer's attendance history as informative relating to the extent to which policies were consistently applied, without suggesting that a direct comparison of treatment might be appropriate. Ms. Palmer, in her testimony, disputed the arbitrator's understanding of her attendance history and records.⁵

⁴ Footnote 8 of the arbitration decision is the arbitrator's summary of the attendance issues of Ms. Palmer. The recitation includes several instances of a record reflecting arrival at work five or less minutes from the nominal start time of 8:30AM – with the first recited instance being a one-minute-late entry.

⁵ The plaintiff's response to this challenge to the accuracy of the arbitrator's interpretation of the evidence may be a testament to counsel's zealous advocacy but is lacking in any level of plausibility. Counsel suggested that an appeal could have been taken, if the arbitrator had erred. Given the high level of deference to arbitrators, even when they depart from legal and evidentiary standards applicable in court (see, e.g., *Town of South Windsor v. South Windsor Police Union Local 1480, Council 15*, 255 Conn. 800, 816, 770 A.2d 14 (2001) (narrowness of exceptions to rule of deference to arbitration decisions)), a claimed factual error of this nature would be extraordinarily unlikely to be considered reversible error (aside from the non-dispositive quality of the issue itself). Further, Ms. Palmer would likely lack standing to appeal, and there would seem to be no reasonable basis for the defendant to have pursued such a likely futile appeal.

A common and fatal theme implicit in earlier observations and throughout this decision, the court cannot conclude that the plaintiff proved, by a preponderance of the evidence, that she made either of the statements claimed to have been made, especially in the context of identified meetings. The November statement was made on a date scheduled for a hearing/meeting that never went forward, with the designee of the defendant for that meeting affirmatively (and credibly) stating that she never met with the plaintiff on that date. According to the notes of Mr. Lucas, "a" statement relating to Ms. Palmer was made on the January date, but not by the plaintiff.

A common logical fallacy is "post hoc ergo propter hoc" – defined in Merriam Webster online dictionary⁶ as "after this, therefore because of this : because an event occurred first, it must have caused this later event —used to describe a fallacious argument." The plaintiff's employment may have been terminated after she made statements about Ms. Palmer's attendance (not proven; see above), but the court cannot find a basis to conclude that there was or could have been any causal connection between the two under the facts of this case. The evidence made it abundantly clear that Ms. Palmer played no role in the determination of the consequences to be imposed on the plaintiff as a result of her attendance-related issues. The court recognizes that there is no requirement that the subject of statements made by the plaintiff needed to have been "the" or even "a" decision-maker relating to the plaintiff's termination, but that distinction is a factor to be considered. Ms. Palmer may have been a witness in providing information, and may have attended some proceedings, but there is no credible evidence or reasonable inference that she was involved in the decision-making process. The decision-makers were identified, and no decision-maker identified any role, direct or indirect (other than a source of information), of Ms. Palmer. The court sees no basis to draw an

⁶ <https://www.merriam-webster.com/dictionary/post%20hoc,%20ergo%20propter%20hoc>

inference that would be more speculative than reasonable, connecting any criticism of Ms. Plamer to the discipline imposed on the plaintiff.

Somewhat related, there was no credible evidence (if at all) that anyone in the chain of decision-making was sufficiently close to Ms. Palmer that there might be an inference that there was any intent or attempt to punish the plaintiff as an implicit punishment for her statements. Indeed, the chain of decision makers – and expanding the universe to include the assigned investigator, Mr. Lucas – had any reason to act otherwise than on the merits of the attendance-related issues of the plaintiff.

Still further, as implicit in the defendant's argument at pp. 22-23 of its initial brief, once disciplinary proceedings are underway – and here there were consecutive proceedings, reflecting continuation of the type of conduct that had led to the first disciplinary process (with a stipulation by the plaintiff as to the outcome of that proceeding) – a claimed exercise of a right to free speech cannot become a retroactive defense with respect to the conduct giving rise to the initiation of discipline, preventing an outcome that likely would have been the result based on the employee's documented conduct.

Although addressed in part already, the court will now address the record before it in somewhat greater detail. The plaintiff insists that she made statements about Ms. Palmer's attendance in late 2016 and early 2017. See, e.g., pages 3-4 of plaintiff's trial brief: "During the investigative and predisciplinary meetings held in November 15, 2016 and January 19, 2017 the Plaintiff reported to the Defendant that Roberta Palmer a supervisor of Housing Court mediators and Deputy Director of Civil Housing and Small Claims Matters had inappropriately and unethically committed theft of time during her employment with the Defendant State of Connecticut Judicial Branch, and had been paid through public funds, including taxpayer funds, for time that she had not worked." The plaintiff relies essentially exclusively on her own

testimony; none of the decision-makers who provided evidence (as well as Mr. Lucas, the investigator) recalled or memorialized any such statement from the plaintiff. (Mr. Lucas, in one of his notes (Exhibit DD) recorded that a union representative had made a statement to that effect on January 19, 2017.)

Plaintiff pays scant if any attention to the fact that her attendance issues date back a year prior to the earliest of these two claimed communications. It started when the plaintiff was identified as repeatedly entering the Norwalk courthouse after hours. As reflected by Exhibit A, she was entering the courthouse "after hours on a frequent basis. Reportedly, she is entering as late as 7:00 pm and in the building after 8:30 pm. I spoke to Ed who told me that she does not have authorization to be in the building and that he actually spoke to her sometime last year and told her that she did not have permission to enter after hours." This led to an investigation conducted by Mr. Lucas, with a resulting 10-page report dated November 10, 2015, concluding that "Through her actions, Semexant-Coffy falsified Judicial Branch attendance documents, stole time, and engaged in excessive tardiness without charging time. As such Semexant-Coffy violated Judicial Branch Policy 501 - Absences, and 502 - Reporting Attendance."

In other words, the initial identification of attendance issues, potentially leading to disciplinary consequences, had roots in other problematic conduct of the plaintiff – with an explanation of questionable plausibility given the characterization of her entries into the courthouse after hours as "repeatedly" and at late to very late hours.

A little more than a week later, Ms. Palmer sent an e-mail to the plaintiff and other mediators, specifying procedures that were required to be followed relating to the JETTS system that was being used to keep track of attendance-related records. In March 2016, Ms. Palmer sent out another email relating to the need to adhere to proper attendance policies and procedures (Exhibit M). She also sent an email to the

plaintiff (Exhibit N), on March 21, 2016, reminding the plaintiff that she was the plaintiff's supervisor in the absence of Ms. Texeira while also seeking records relating to her attendance.

Exhibit L, an email exchange between Mr. Lucas and Ms. Texeira in December 2015, reported and reflected his concerns about the information he had been provided by the plaintiff about attendance policies.

On October 28, 2016, the Temporary Executive Director, Superior Court Operations issued a disciplinary notice to the plaintiff (Exhibit P) relating to sanctions being imposed due to her attendance practices and records relating to attendance.

On November 8, 2016, the Program Manager of Court Operations Administration issued a notice to the plaintiff of a pre-disciplinary meeting scheduled to be held on November 15, 2016 (Exhibit Q). The notice identified nine specific dates in the prior six weeks where there were identified occurrences, described as "unauthorized absences." It was not until November 15, and again at a later disciplinary event in January 2017, that the plaintiff claims to have claimed that Ms. Palmer also was engaged in improper attendance practices.

The court recognizes that memories of events occurring 8± years ago may be imprecise, but the court's recollection is that no one asked could remember hearing the plaintiff make statements about Ms. Palmer's claimed improper attendance practices. A lack of memory of such statements being made is consistent with no statement having been made, or consistent with a faded/failed memory, or consistent with a statement that might have been heard but promptly disregarded or rejected as an inappropriate deflection in the nature of a variation of "everyone does it."

The main point is that the second round of disciplinary proceedings were already under way – with a sufficient investigation to have allowed nine specific dates

to have been identified in a relatively short period of time – before the plaintiff reportedly first made the statements that form the basis for her claim of retaliation.

To the extent that the plaintiff is claiming that some level of disparate treatment is an equivalent to retaliation, there are additional unmet hurdles. First, there is the credible testimony of at least some decision-makers that they were unaware of (had not heard of) the plaintiff's complaints about Ms. Palmer. Second, there is a lack of equivalence of positions. Starting in October 2015, Ms. Palmer assumed some supervisory duties over personnel such as the plaintiff (Exhibit F) and later became an interim replacement for Ms. Texeira while Ms. Texeira was on leave, and then later a permanent replacement for Ms. Texeira. (Prior to these assignments directly involving the plaintiff, Ms. Palmer had had other managerial-level roles/positions (starting in or around 2008), including having supervisory authority over Ms. Texeira.) It would not be surprising to find that a supervisor did not need the rigor of attendance required of someone working directly with the court docket, and it would not be surprising if the supervisor needed greater flexibility in the role of supervisor.

Further, there was unchallenged evidence that Ms. Palmer had acknowledged to her superiors the existence of some level of problems with her attendance practices. As noted earlier, Ms. Palmer disputed the characterization of her interactions with her superiors as involving problems with attendance (stating she had obtained approval for what she was doing), but even if characterized as self-admitted problems, self-awareness of a problem is to be distinguished from the plaintiff's insistence that she was not doing anything wrong, that Ms. Palmer was not responsive to her needs and was unavailable to approve variations in her schedule, etc. That the plaintiff, while the details of her first disciplinary proceedings were being finalized and implemented, was engaged in further conduct perceived to require a second round of disciplinary proceedings, provides a further basis for distinguishing

the plaintiff from Ms. Palmer. (In addition to specific dates in September and October as recited in Exhibit Q, additional dates were subsequently identified; see, e.g., Exhibit 2 and Exhibit X, reciting dates in November and December 2016, subsequent to execution on November 16, 2016, of a stipulated agreement relating to the first round of disciplinary proceedings.)

The plaintiff, reasonably and properly, puts great weight and reliance on the decision of the arbitrator – the final step in the applicable grievance procedure – reversing the decision to terminate the plaintiff for cause. The decision was submitted as a full exhibit (Exhibit 1). The arbitrator reports having heard evidence over the course of three days, supplemented by briefs from both the defendant and the plaintiff's union (as her collective bargaining representative). With substantial overlap to ground covered in the hearings in court, and addressing some issues not addressed in detail if at all in court, the decision provides a useful supplement as well as an authority to check or cross-check for inconsistencies.

The court's starting point is the recognition – as documented in other matters including appellate level review – that arbitrators are reluctant to uphold a workplace termination in all but extreme cases, sometimes referring to termination as the employment equivalent of capital punishment and thereby justifying imposition of a standard higher than preponderance of the evidence. See, e.g., *Town of South Windsor v. South Windsor Police Union Local 1480, Council 15*, 255 Conn. 800, 824-26, 770 A.2d 14 (2001); see, also, *MacHrotech, LLC D/B/A v. Gentile Enterprises, LLC*, Docket No. FBTCV236124418S, 2024 Conn. Super. LEXIS 2394, at *15-16, 2024 WL 4825151 at *6 (Super. Nov. 15, 2024).

With that as the context, the arbitrator reversed the termination of employment, but did not award any back pay or other retroactive relief. As a result, the plaintiff's "net" sanction was approximately a 28-29 month suspension without pay or other

benefits, and a last-chance provision to the effect that the plaintiff would be subject to termination (subject to limited conditions) in the event of an unauthorized absence in the 12 months after her return. The arbitrator emphasized the seriousness of the situation in which the plaintiff had placed herself:

"I do not reach this decision to reduce the termination to a long term suspension lightly. The Grievant needs to understand that her tardiness is not acceptable, and that she needs to follow the procedures set forth by Palmer and the Branch to communicate her absence and tardiness."

The arbitrator made it clear that he considered the attendance situation of Ms. Palmer only for the purpose of assessing the consistency of enforcement of policies (while noting that she had obtained permission to make up time). He declined to treat Ms. Palmer and the plaintiff as sufficiently similar so as to allow some level of comparison in treatment. While the court may have missed it, the arbitrator does not seem to have addressed – presumably because he had not been asked – to consider whether there was any level of retaliation by or on behalf of Ms. Palmer.⁷

The arbitrator focused on two interrelated perceived deficiencies in the handling of the plaintiff's second disciplinary matter – there had been a compression of separate steps of progressive discipline based on multiple violations into a single composite process, perceived as not having followed the required incremental process for discipline, compounded by the absence of a sanction with a last-chance quality. That the plaintiff's violations were serious was not in question, demonstrated

⁷ The arbitrator's decision was admitted as a full exhibit, and the court does not recall any limitation on use of the exhibit. "An exhibit offered and received as a full exhibit is in the case for all purposes." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cole*, 189 Conn. 518, 525, 457 A.2d 656 (1983). To the extent some of its contents may be considered to be hearsay, hearsay evidence that is admitted without objection may be considered on a "for what its worth" basis; see, e.g., *Tragakiss v. Dowling*, 183 Conn. 72, 74-75, 438 A.2d 818, 819 (1981).)

by such factors as leaving in place the effect of more than two years of no salary and no benefits, and the imposition of a one-year last chance provision. Indeed, the Union itself seemed to recognize, at least implicitly, the seriousness of the misconduct of the plaintiff, to the extent that the arbitration decision reflects that the Union itself, if reluctantly, had proposed a result similar to the one adopted by the arbitrator – reinstatement but with no back pay or benefits.⁸

The court, of course, must decide the case presented to it, on the merits of the case as presented. The court must note its concern about the consequences of the relief being sought by the plaintiff. As of the date of commencement of this action, the plaintiff no longer was in a status of discharged or terminated – as a matter of law as a consequence of the outcome of binding arbitration, her status was that of someone who had been suspended without pay or benefits for a period of 2+ years. After what amounted to a plenary review of the action of the defendant-employer, that loss of pay and benefits had been determined to be a proper remedy for the wrongful conduct of the plaintiff (which originally had resulted in the challenged termination). The effect of the relief sought by the plaintiff, then, would be to restore the plaintiff to the position she would have been in had she not been found to be in serious violation of the requirements related to attendance and record-keeping. More concisely, the plaintiff is seeking to have the same status as if she had been determined to have done nothing wrong.

⁸ At page 30 of the arbitration decision, in concluding a two-page recitation of the Union's position:

"With regard to the remedy, the Union states in its brief that a remedy should be fashioned consistent 'with the handling of the cases in Joint Exhibit 24.' It goes on to state, 'Although not optimal for the Grievant, awarding a return to work with no back pay decision would, in essence be tantamount to a last chance agreement as further violations would result in termination considering the Grievant has already been out of work for over two years.'"

From an alternate perspective, although no appeal was taken by the Union as the plaintiff's representative (there has been no identified appeal), the plaintiff effectively is challenging the award resulting from the binding arbitration process. In that sense, it is a collateral attack on the finality of the arbitration award.

Yet another alternate perspective relates to causation and damages. Even assuming that there had been a retaliatory motivation behind the termination of the plaintiff, the improper consequences of the termination already have been remedied; she has been restored to the status of an employee (with the lost time being characterized as a suspension). As a necessary complementary aspect, the loss of income and benefits for 2+ years (the length of what is now being characterized as a suspension) was determined to have been a proper sanction for the plaintiff's conduct. If the loss of income and benefits for her 2+ year suspension has been determined to have been a proper sanction for the plaintiff's conduct, then that loss of income and benefits for 2+ years could not have been caused by any improper retaliation for the plaintiff's exercise of her rights under the statute – according to the arbitrator, that is the discipline that should have been imposed on the plaintiff, based on the seriousness of her conduct. As implicit if not explicit, this concern is in addition to the court's inability to find that anything the plaintiff may have said about Ms. Palmer led to any level of retaliation, i.e., the required causative link has not been established.

There also is the omni-present non-trivial question of any public interest in the plaintiff's claimed statements, or whether the defensive nature of her claimed statements (perhaps invoking the notion that a good offense is the best defense) were not intended to address anything beyond her own personal interest in resisting imposition of sanctions. This is not a situation in which the allegedly-protected statements were made, with adverse consequences clearly following; the earliest

(and discredited) first statement was approximately a year after an investigation had been commenced into the plaintiff's attendance and attendance-reporting practices (not including the investigation into why she had been in the Norwalk Courthouse long after her work hours had concluded). Her improper conduct had been identified well before the November meeting at which she first claims to have made a protected statement – and instead of a meeting to discuss her disciplinary status, she had entered into a stipulation relating to her improper conduct on that date. Likewise, the January meeting had been scheduled precisely because the plaintiff reportedly had continued to engage in improper attendance practices – the November stipulation seemingly having had little or no effect. Plaintiff's claimed statements all were claimed to have been made in a private context – defending against disciplinary charges, first resulting in a stipulation and then in an arbitration award after continued conduct resulting in an affirmation of the seriousness of the plaintiff's conduct.

In her initial brief, the plaintiff discusses, extensively, *Trusz v. UBS Realty Investors, LLC*, 319 Conn. 175 (2015). With emphasis by way of underlining, the plaintiff quotes from that decision, relating to the protection afforded by the Connecticut Constitution – it “protects even speech made pursuant to an employee's official job duties as long as the speech is a ‘comment on official dishonesty, deliberately unconstitutional action, other serious wrongdoing, or threats to health and safety’” (citation, omitted.) The plaintiff also cites *Violette v. Catalyst Solutions, LLC*, Docket No. 18-cv-1875 (KAD), 2019 U.S. Dist. LEXIS 101193 (D. Conn. June 18, 2019).

While certainly not determinative, all of the cases cited by the plaintiff involved a “clean” framework for cause-and-effect. All of the cases involved a plaintiff speaking out followed by initiation of discipline or other adverse action taken. Here, the plaintiff was well into a year of a history of investigation with disciplinary action being

contemplated and initiated, as of the time of her first claimed statement (which as discussed, is undocumented and inconsistent with the events actually occurring on the November date identified), and a second level of discipline having been initiated before the time of the second claimed statement (also undocumented – with documentation that the subject had been raised by a Union representative as a defensive maneuver).

Further, even if either or both statements were deemed to have been made as claimed, there is a serious question – doubt – as to whether they fit within the scope of “comment on official dishonesty, deliberately unconstitutional action, other serious wrongdoing, or threats to health and safety” (emphasis added). The court construes “official dishonesty” to refer to dishonesty in performance of official duties, not whether there is an accusation that an employee arrived to work one minute or 10 minutes late or did not accurately log arrival or departure times in time records. It is implausible and unreasonable to put “deliberately unconstitutional action, other serious wrongdoing, or threats to health and safety” into the same category as the plaintiff’s claimed complaints that Ms. Palmer sometimes arrived late for work and sometimes did not keep accurate records of her attendance – especially given the fact that as a supervisor, it would not be surprising for her not to be required to be as accountable for her time as someone in the plaintiff’s position. In effect, the plaintiff is claiming that it is a matter of public interest to know that the plaintiff was challenging a possible disparate treatment of supervisors and those they supervise with respect to attendance issues. (Again, a major distinguishing feature is the unchallenged assertion of Ms. Palmer that she obtained approval from her supervisor(s) for variations from her presumed regular hours.)

The plaintiff cites a number of cases for the proposition that issues pertaining to financial affairs are of a sufficiently public nature to support a claim under the

statute. Cases cited by the plaintiff in her original brief and reply brief generally stand for the propositions cited, but they generally fit relatively easily in terms of the requirements of the statute. In *DiMartino v. Richens*, 263 Conn. 639, 822 A.2d 205 (2003), action was taken against the plaintiff after he cooperated directly with the police after repeated concerns about unauthorized entry into his workspace on airport property, which also implicated airport security (including access to keys in his workspace implicating airport security elsewhere).

The plaintiff cites *Cotto v. United Technologies Corp., Sikorsky Aircraft Division*, 48 Conn. App. 618, 631, 711 A.2d 1180 (1998); *aff'd* 251 Conn. 1, 738 A.2d 623 (1998), for the proposition that "[a]n example of an issue of public concern is one involving the expenditure of public funds . . ." On that same page, however, the court also recognized that disputes related to working conditions, such as grievances, would not likely satisfy the requirements. (The appellate decisions affirmed the granting of a motion to strike the statutory claim under General Statutes § 31-51q.)

The plaintiff cites *Raible v. Essex Yacht Club, Inc.*, 2003 Conn. Super. LEXIS 2474, (Super. 2003) for the proposition that "speech made by employee concerning an employer's potential tax evasion implicates public policy." The case has a somewhat lengthier passage, excerpted from an earlier case, stating the proper standard more generally:

"In order to show that constitutionally protected rights are at issue under Sec. 31-51q, a plaintiff must allege that [she] was exercising [her] free speech rights as a citizen with respect to a matter of public concern . . . The issue to be addressed is not simply whether the subject matter of the employee's complaint touches on a matter of public concern generally; the issue is whether . . . an employee was acting as a citizen attempting to speak out on a public issue, or whether the employee was instead attempting to resolve a private dilemma

relating to employment." (Internal quotation marks and citation, omitted.) 2003 Conn. Super. LEXIS 2474 at *7.

Raible clearly involved speech intended to convey an opinion and not, as here, a defensive approach to accusations of wrongdoing. The context of speech repeatedly is identified as a factor, and defensive use – responding to an accusation of wrongdoing – almost as a tautology has a personal quality rather than subject to characterization “as a citizen attempting to speak out on a public issue.” Is there any question as to whether in allegedly making the identified statements, the plaintiff “was ... attempting to resolve a private dilemma relating to employment”?

The plaintiff cites *Sobczak v. Meriden Board of Education*, 419547, 2000 Conn. Super. LEXIS 2574 (Super. Oct. 6, 2000) for the proposition that “the inflation of a public employee's overtime hours is a matter of public concern” (her words). The court has reservations about equating inflated overtime – often at a premium hourly rate and often in increments of hours – with arriving at work late, often by a few minutes (with many instances apparently below a safe-harbor policy-limit disregarding lateness by only a few minutes) and occasionally with absent or erroneous entries. There also is the reversal of a sense of cause and effect – as typically the case, the plaintiff in *Sobczak* made a statement that resulted in initiation of disciplinary procedures against him; here, the plaintiff had been involved in a disciplinary process for about a year before she claims to have made her first statement about Ms. Palmer, and the second statement claimed to have been made was in the course of another round of disciplinary proceedings already underway.

Further, the plaintiff does not address the procedural context of the decision in *Sobczak*. The cited decision was on a motion to strike. The court denied the motion to strike based on what might be provable under the allegations of the complaint, but noted:

"However, to be within the ambit of General Statutes § 31-51q, the plaintiff must have been motivated to speak out as a public citizen. While it appears highly unlikely from its form, content and the circumstances surrounding the grievance that it was motivated by a desire to speak out as a citizen, 'motivation is a quintessential issue of fact.' Questions of fact should not ordinarily be resolved on a motion to strike." (Citations, omitted.) 2000 Conn. Super. LEXIS 2574, at *9

The "form, content and the circumstances surrounding" the plaintiff's claimed statements do not rise to the level of the facts in *Sobczak* in a number of ways, including the absence of any documentation or witness evidence that the statements were made, the evidence demonstrating that the meeting in November 2016 had not actually gone forward as a meeting (instead becoming a disposition by signing of a stipulation), and that the comments were not intended as a form of expression of free speech but rather a defensive tool in resisting disciplinary procedures that were well underway.

The broader standard as articulated in *Sobczak*:

As a statutory matter, a statute [such as § 31-51q] that protects constitutional rights in the workplace should not be construed so as to transform every dispute about working conditions into a constitutional question . . . The statute [§ 31-51q] only applies to expressions [1] regarding public concerns that are [2] motivated by an employee's desire to speak out as a citizen. . . .

"The test [for public concern] is whether, as a matter of law, 'the content, form and context of a given statement, as revealed by the whole record,' constitute speech on a matter of public concern. Thus, whether the subject matter addressed by a particular statement is of public concern involves a question of law for the court. However, whether a particular statement addresses such a matter depends on its content, its form, and the context in which it is made. This later inquiry necessarily

involves a question of fact." (Internal quotation marks and citation, omitted.) 2000 Conn. Super. LEXIS 2574, at *6-8.

There seems to be no room for doubt – if the plaintiff did make the statements she claims to have made, they were not “motivated by [her] desire to speak out as a citizen....” She was resisting disciplinary charges directed to her conduct.

On the topic of cases cited by the plaintiff, the plaintiff cites *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), suggesting that its burden-shifting analysis can be useful. The plaintiff then cites *Perez-Dickson v. Bridgeport Board of Education*, Superior Court, judicial district of Fairfield, Docket No. CV-13-6033116-S, 2016 Conn. Super. LEXIS 3233 (December 5, 2016, Kamp, J), as having applied that burden-shifting approach to a claim under § 31-51q. The defendants contend that it is not necessary, and the court does not find it to be particularly helpful in this case, especially from the perspective of the plaintiff. Assuming that the plaintiff can claim to have satisfied the first requirement – as discussed herein, questionable at best – there can be no question as to the existence of evidence of a legitimate, nonretaliatory reason for the defendant’s employment action. (The process of discipline for the plaintiff had begun a year prior to the first claimed protected statement.) This case was tried on the premise that the court needs to decide the merits of the dispute, essentially the third step in the process.

As to claims of liability, then, the court concludes that the plaintiff has not proved, by a preponderance of the evidence, that she made the claimed statements and especially made them to anyone involved in the disciplinary process (or that they had been communicated to anyone involved in the disciplinary process); that Ms. Palmer in any way took steps to retaliate against the plaintiff and that anyone involved in the disciplinary process was motivated to retaliate against the plaintiff or did retaliate against the plaintiff; and that the statements she claims to have made were

for anything other than a private/personal purpose (defending disciplinary charges originating for reasons wholly unrelated to her claimed statements). Accepting the arbitrator's apparent conclusion that there was inconsistent treatment of employees, there is no credible evidence that any such disparity was a result of retaliation, and the court cannot conclude that the evidence supported such an inference.

Damages:

The court has concluded that the plaintiff has not established entitlement to relief. The court is addressing the issue of damages because, even if the court were determined, on appeal, to have erred in its determination of liability, the plaintiff would be entitled to no more than nominal compensatory economic damages.

Under the facts of this case, the term "termination" has been used in something of a dual or imprecise sense. In a historical sense, as of March 2017, the plaintiff's employment had been terminated. As of July 2019, the termination had been converted to a "time served" suspension from employment (without pay or benefits). To the extent that there had been a decision to terminate the plaintiff, that is or might be relevant to the claim of retaliation. As of the commencement of this litigation, the plaintiff had been restored to employment such that there were no prospective or ongoing damages resulting from the decision to terminate her employment. The plaintiff is claiming damages resulting from a loss of income in the approximate 28-29 months between termination and re-instatement. The plaintiff does not appear to address the problem already identified by the court – she effectively is seeking to nullify the effect of the arbitration award that determined that a loss of pay and benefits for that period of time was an appropriate sanction for the plaintiff's misconduct. Notwithstanding the arbitration award, the plaintiff effectively is seeking

exoneration from any consequences of her improper conduct (over an extended period of time).

If there had been a retaliatory component to the discipline, the plaintiff might be entitled to some level of non-economic relief. Even then, it would be difficult to justify anything beyond a nominal or modest level of relief, given the essentially undisputed circumstances of this case. At the same time that the initial disciplinary proceedings were approaching resolution – a meeting scheduled for November 15, 2016 which did not take place due to the execution of a stipulation imposing agreed sanctions on the plaintiff, with delays in the process credibly attributable to a backlog of work for defendant's officials engaged in the disciplinary process – the plaintiff was continuing to engage in the conduct that had led to the initial disciplinary procedure; see, e.g., Exhibits 5 and U. The resumption of the conduct of the plaintiff, on the heels of the initial disciplinary action, had been sufficiently severe that the arbitrator deemed an appropriate rolled-back sanction to have been a suspension without pay for a period of more than two years. Although the effect of the arbitration decision was to provide a reprieve from the finality of the administrative process resulting in termination of employment, the emotional distress associated with the loss of her employment for 28-29 months was self-inflicted, and the overlay of concern about a permanent loss of employment during that time was a consequence of the self-inflicted aspect of continued disciplinary violations.

Defenses:

The court will address, if briefly, the defenses asserted by the defendant. The first special defense asserts that one or all of the plaintiff's claims fail to state a claim upon which relief can be granted. That is a definition of a legally-deficient claim for which the appropriate remedy is a motion to strike – the defense is essentially

definitional of the purpose for a motion to strike. Conversely, it does not fit within the scope of *Practice Book* § 10-50 which effectively defines the scope and purpose of a defense.

A plaintiff may not be able to obtain judgment on a claim that is legally deficient in a fatal aspect, but that is to be distinguished from inartfully drafted claims. See, e.g., *Tedesco v. Stamford*, 215 Conn. 450, 457, 576 A.2d 1273 (1990). The defendant has not identified a fatal defect in the complaint itself or any other manner in which this defense might be applicable other than in a failure of proof sense – which is in the nature of a denial.

The second special defense asserts that any employment decisions made regarding the plaintiff were for legitimate nonretaliatory reasons. That is not a defense under *Practice Book* § 10-50 – it is effectively a denial. (The court assumes that the defendant was not intending to assume the burden of disproving retaliation; see, e.g., *Janow v. Ansonia*, 11 Conn. App. 1, 8 (1987); *Atlantic Richfield Co. v. Canaan Oil Co.*, 202 Conn. 234, 237, 520 A.2d 1008, overruled on other grounds, *Santopietro v. City of New Haven*, 239 Conn. 207, 212, 213 n.8, 682 A.2d 106 (1987).)

The third special defense asserts that the plaintiff failed to mitigate her damages. That is a proper defense, with the burden on the defendant. The court has concluded that the plaintiff would not be entitled to the wages and benefits associated with the period of suspension; if she were entitled to such a recovery, she did present adequate evidence of a reasonable effort (under the circumstances) relating to attempting to mitigate damages.

The fourth special defense asserts that all or some of the plaintiff's claims may be barred by the Statute of Limitations. The defendant has not pursued this defense adequately, to the point that it appears to have been abandoned. There is no

identification in the defense of the applicable statute. There is no clear indication of the claimed date on which the limitations period is claimed to have started to run – the date of termination? The date of issuance of the arbitration award? Some other date?

Finally, the defendant asserts that it reserves the right to assert additional defenses as they become known through discovery. That is not a defense and not a “right.” The defendant may have had the right to ask to be allowed to assert additional defenses (*Practice Book* § 10-60), but there is no identified or known “right” (especially in unqualified terms) to assert additional defenses. (*Practice Book* § 10-60 explicitly authorizes the court to refuse to allow an amendment to the extent that a proposed amendment may impact the ability to try the case in a timely manner.⁹)

Conclusion

The court is well-aware that in any employment hierarchy – whether characterized as a bureaucracy or not – a change in supervisory management can create uncertainty for those being supervised. The new manager may have a different “style” of management, or there may be a personality conflict. The nature of the hierarchy, however, is that the people being supervised need to adjust, as necessary, to the realities of a new manager, particularly with respect to the strictness with which clearly established policies will be enforced. Conversely, while those being supervised have a right to comment or complain about alleged wrongdoing of a

⁹ “(c) The judicial authority may restrain such amendments so far as may be necessary to compel the parties to join issue in a reasonable time for trial. If the amendment occasions delay in the trial or inconvenience to the other party, the judicial authority may award costs in its discretion in favor of the other party. For the purposes of this rule, a substituted pleading shall be considered an amendment.”

the sanction of termination imposed on the plaintiff was a form of retaliation for her claimed complaints against Ms. Palmer.

In a broader context, the plaintiff seeks to avoid the consequences of her conduct by pointing to Ms. Palmer. While Ms. Palmer disputes the accuracy of the arbitrator's summary of her testimony, even in that version of events, many of the supposed violations were trivial (five minutes or less, within a policy allowing for minimal untimely arrivals at work), and she reportedly had advised her superiors of the situation. Also undisputed, and somewhat within the presumed scope of authority of a supervisor, she made up any late arrivals by staying late – and her duties in the morning were not identified as having the same time-critical quality as did persons in the role of the plaintiff who were integral to court proceedings scheduled for each morning.

Conversely, the plaintiff minimizes if not disregards the extent to which her conduct, over an extended period of time, started and prolonged and renewed the process of disciplinary proceedings – starting with the seemingly inadequately explained reasons for repeated late entry into the Norwalk Courthouse, which led (apparently independent of any prompting from Ms. Palmer) to identification of numerous irregularities in the plaintiff's attendance and attendance records, which in turn led to the scheduled November hearing which transitioned to a stipulation of wrongdoing, which was followed by further disciplinary proceedings due to a continuation of improper attendance practices by the plaintiff ((almost without interruption after the November stipulation)). It is not surprising that Ms. Palmer was asked to provide information to the investigators, and it is not surprising if Ms. Palmer were following developments in the plaintiff's sequential disciplinary proceedings; the court sees no basis to transform those activities into inferences of efforts at retaliation.

manager, that is not inherently a defense to a claim that the subordinate has been engaging in wrongful conduct. The plaintiff has not met her burden of establishing any level of retaliation by direct or circumstantial evidence.

Here, plaintiff's claim to have said "she is doing it also" as directed to the conduct of Ms. Palmer fails to support a claim of retaliation on a number of levels. First, the administrators involved in the disciplinary process for the plaintiff denied being aware of any such accusations from the plaintiff during the course of the disciplinary process. The plaintiff has identified two occasions on which such statements are claimed to have been made to the defendant's personnel, a November 2016 meeting and a January 2017 meeting. There is persuasive evidence that the scheduled November meeting never involved any interaction between the plaintiff and defendant's personnel (especially Ms. Rooney who had initiated the scheduled November meeting; Exhibit 5) but instead had been converted to execution of an agreement whereby the plaintiff acknowledged misconduct and agreed to a level of sanctions. The January meeting was scheduled shortly thereafter due to the perception that despite the November stipulation, the plaintiff had continued to violate attendance and attendance record policies. Mr. Lucas, who kept seemingly comprehensive notes of meetings and interviews, noted that a Union representative had made mention of the conduct of Ms. Palmer in January – not a protected statement by the plaintiff and clearly intended as a topic for negotiation or a consideration for mitigation.

The substantive difference between the positions of the plaintiff and Ms. Palmer – Ms. Palmer as a supervisor and the plaintiff as an employee clearly disgruntled about the management style of her new supervisor – as reinforced by the assertion of Ms. Palmer that she obtained approval from her supervisors for her making up time by staying late – simply increases the implausibility of the claim that

There is a reasonable inference that the issue of retaliation did not become an identified issue until after the arbitration proceeding. The hearing in that proceeding generated evidence relating to instances of Ms. Palmer arriving late for work (according to available records). Although mentioned by a Union representative in January 2017 (according to Mr. Lucas' notes), the 40+ page decision of the arbitrator does not mention any claim of retaliation. Plaintiff, here, is claiming a causal connection between her claimed criticism of Ms. Palmer's attendance practices and the decision to terminate her employment; is there any doubt that such a claim would have come within the scope of the arbitration proceeding, including multiple days of evidence, briefs, etc., if it had been raised in that proceeding? As identified at the beginning of the decision, the issue presented to the arbitrator was:

"Did the State of Connecticut Judicial Branch have just cause, pursuant to Article 14 of the Collective Bargaining Agreement between the parties to terminate employment of the Grievant, Magalie Semexant-Coffy, on March 1, 2017? If not, what shall be the remedy in accordance with the Collective Bargaining Agreement?"

If there had been a claim that retaliation was "a" if not "the" actual cause for termination, would there not have been at least an identification of that claim (even if summarily rejected for some reason)?

There is inadequate credible evidence that either or both claimed statements (November 2016 and January 2017) actually were made by the plaintiff, and that if such statements had been made, that they were made to anyone involved in the disciplinary procedures relating to the plaintiff's attendance issues. There is no credible evidence that Ms. Palmer made any attempt to influence the outcome of the disciplinary proceedings and especially any attempt to achieve a result of termination of the plaintiff's employment. (As a supervisor, she may have kept abreast of developments and may have provided relevant information to those involved in the

investigation of the plaintiff.) In light of the history of the plaintiff's involvement with disciplinary issues, it is not a reasonable inference that if such statements had been made, and had been made to anyone involved in the disciplinary process or brought to the attention of anyone involved in the disciplinary process, that it would have had a material effect – in a causation sense – on the decision to terminate the plaintiff.

That the plaintiffs' conduct was perceived to be serious and warrant substantial consequences is implicit in the arbitrator's decision. The decision does not appear to suggest any sense that the conduct itself was not sufficiently severe to warrant termination. Rather, the emphasis was on procedural aspects. The arbitrator identified some level of inconsistency in treatment of attendance issues (with Ms. Palmer being considered in that regard). The arbitrator seemed especially concerned about the procedural aspects of the case, where multiple violations by the plaintiff had been treated as satisfying multiple steps in the progressive discipline process, coupled with the absence of a last-chance agreement or sanction.

Although arguably cumulative in light of the foregoing, the court cannot conclude that the statements allegedly made satisfy the predicate for application of the statute. This was not a statement made by someone acting in her status as a citizen, commenting on a matter of public concern. Not every act of every municipal employee comes within the scope of "official dishonesty, deliberately unconstitutional action, other serious wrongdoing, or threats to health and safety" even if there is some level of involvement of tax dollars. Assuming/accepting that attendance irregularities constitute a form of dishonesty, that might be difficult to characterize as "official" dishonesty. "Official" dishonesty seemingly would require some aspect of dishonesty in performing duties; application to instances of being late to work by 10 minutes would seem to distort if not trivialize the concept of "official" (especially in the context of the seriousness of the other terms – "deliberately unconstitutional action,

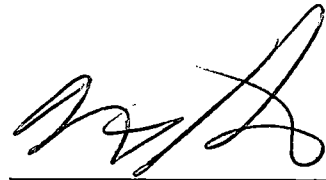
other serious wrongdoing, or threats to health and safety”) Taking pens and/or other office supplies home also would have a theoretical financial impact – would such a complaint satisfy the threshold for application of the statute, especially if raised in a defensive context?

Conversely, any public quality would have been incidental and unintended. The statements were allegedly made as defensive responses to the charges of wrongdoing directed to the plaintiff. The November 2016 and January 2017 statements allegedly were made in the context of a scheduled meeting/hearing relating to discipline of the plaintiff. To the extent that context repeatedly is identified as an important consideration under the statute, this was not a situation that can be characterized as an exercise of free speech in a public interest context; the context was an attempt to deflect attention from the actual conduct of the plaintiff. (In a loose sense, the arbitrator considered the extent to which others engaged in similar conduct, but from the perspective of inconsistency of enforcement and resulting sanctions.)

The court, then, finds the plaintiff has failed to prove by a preponderance of the evidence that the claimed statement in November 2016 and/or the claimed statement in January 2017 actually were made to any representative of the defendant involved in the process of evaluating the misconduct of the plaintiff and determining an appropriate sanction. The court finds the plaintiff has failed to prove by a preponderance of the evidence that Ms. Palmer, in any manner (other than providing factual information/evidence) attempted to influence the outcome of disciplinary proceedings against the plaintiff and especially the termination of employment imposed in early 2017. Necessarily, the court finds the plaintiff has failed to prove by a preponderance of the evidence any causal connection between her claimed (but not proven) statements relating to Ms. Palmer’s claimed attendance issues and the

disciplinary outcome ordered in 2018 whereby the plaintiff's employment was terminated.

For all of these reasons, judgment enters in favor of the defendant(s).

A handwritten signature in black ink, appearing to be "Povodator, JTR.", written over a horizontal line.

POVODATOR, JTR.