

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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In the Matter of the Application of	:
	:
SUFFOLK COUNTY ETHICS COMMISSION,	:
	:
Petitioner,	:
	:
to compel compliance with a subpoena duly	:
issued and served on,	:
	:
CHERYL A. FELICE,	:
	:
Respondent.	:
-----X	

Index No.: 30161/10

AFFIRMATION

GARY SILVERMAN, an attorney duly admitted to practice in the courts of the State of New York, affirms the truth of the following under penalty of perjury and pursuant to CPLR § 2106:

1. I am a member of the law firm of O'Dwyer & Bernstein, LLP, attorneys for Respondent CHERYL A. FELICE ("Respondent" or "Felice") and am fully familiar with the facts and circumstances of this case based upon a review of the file maintained in relation to this matter.

2. This affirmation is submitted in opposition to an application pursuant to CPLR § 2308(b) by Petitioner, SUFFOLK COUNTY ETHICS COMMISSION ("Petitioner" or "Commission"), specifically with respect to that portion of the Order to Show Cause that directed Respondent to produce documents and records responsive to the subpoena on the return date of the OSC.

3. The reason this separate affirmation is submitted is the recent confirmation there would not be an appearance on the return date, at which time affirmant planned to

produce the documents. Accordingly, true and correct copies of said responsive documents are annexed hereto as Exhibit “A”, which are provided to the Court but not Petitioner at this time.

4. As argued fully in Respondent’s affirmation-in-chief, these documents should not be reviewed by or provided to Petitioner and are subject to the labor union leader privilege. The subject matter of these documents pertain to the private collective bargaining negotiation strategies of the Suffolk County Association of Municipal Employees, Inc. (“AME”), and other confidential, proprietary and tactical information vital to AME’s representation of its members in collective bargaining negotiations with Suffolk County (“County”) and the fulfillment of its other representational duties. Moreover, the discovery of the strategies and tactics contained within these documents by AME’s collective bargaining counterpart would be extraordinarily detrimental to AME’s ability to properly represent its members.

5. As such, even if the Subpoena in question is otherwise valid, the documents annexed hereto are privileged under the common law labor union leader privilege, therefore, Petitioner is not entitled to review or obtain said documents. See Seelig v. Shepard, 152 Misc.2d 699, 578 N.Y.S.2d 965 (Sup Ct, New York County 1991)(holding that the privilege protects against disclosure of “internal Union communications on matters concerning labor relations”). From a review of the annexed documents, it is evident they are this exact type of communication. The labor union leader privilege must be employed herein to protect disclosure of confidential information.

6. Reaching the above conclusion also supports the policy underlying the privilege, in that disclosure of these documents to Petitioner will have a chilling effect on the

exchange of information and labor relation strategies within all Suffolk County public employee unions. It is logical to conclude that a court order requiring production of these documents to Petitioner will serve as a general deterrent to the free flow of labor relations information and ideas between union leaders, employees, consultants and members, as it will be publicly known that the County access a union's most confidential and protected communications merely by having the Ethics Commission concoct an investigation and subpoena said communications in connection thereof.

7. In light of all the above, even if the Court finds the Subpoena is otherwise valid, the Court should find the annexed documents are privileged and quash the subpoena with respect to the documents.

WHEREFORE, for all the foregoing reasons, it is submitted Petitioner's application to compel compliance should be denied in its entirety, and Respondent's cross-motion to quash the Commission's subpoena should be granted in its entirety.

Dated: New York, New York
September 15, 2010



GARY SILVERMAN