

THE POLICE CHIEF AND "JUST CAUSE" UNDER CONNECTICUT LAW

I. LEGAL BASICS OF THE EMPLOYMENT RELATIONSHIP

A. Private vs. Public Employment

If the employer is a private firm or entity, the employment relationship is private. If the employer is the federal, state or local government or board of education, the employment relationship is public. The police chief is a public officer, with the duty to appoint individuals to the police force, and when necessary to suspend or remove them, and discharge of that duty requires use of a sound discretion. Stiebitz v. Mahoney, 144 Conn. 443, 446 (1957); Tremp v. Patten, 132 Conn. 120, 125 (1945). *Conn. Gen. Stat. § 7-274* authorizes any town to establish a board of police commissioners by ordinance to serve as the appointing authority to organize and maintain a police department. In other instances the town or city charter may establish a police board or commission (hereafter sometimes referred to as the "Commission"). Board of Police Commissioners of City of Norwich v. White, 171 Conn. 553 (1976). *Conn. Gen. Stat. § 7-276* vests power of appointment, promotion, suspension and removal in the police commission.

B. Employment "at-will"

An employee hired for indefinite duration without employment contract who may quit or be fired at any time with or without notice is often referred to as an "at-will" employee. Most municipal employees, having completed a probationary period, receive protections under a collective bargaining agreement or civil service rules and are not considered "at will." Exceptions to "at will" status normally derive from contract, tort or statutory rights. Connecticut is generally an "employment-at-will" state. Unless protected by statute, contract, implied contract, discrimination or public policy grounds, an employer can terminate the "at will" employee for any reason at any time without a hearing. Sheets v. Teddy's Frosted Foods, Inc., 179 Conn. 471, 474 (1980). No due process rights pertain to employment-at-will. In the absence of the protection of *Conn. Gen. Stat. § 7-278*, charter or civil service protection, or protective language in a contract of employment, the police chief would likely be considered an "at will" employee. The only restrictions placed on disciplinary action against a public sector "at will" employee are that the discipline cannot be imposed for unconstitutional or illegal (such as, discriminatory) reasons.

C. The Employment Relationship is Contractual

All employer-employee relationships not governed by express contracts involve some type of implied 'contract' of employment. Gaudio v. Griffin Health Services Corp., 249 Conn. 523, 532 (1999). No serious dispute exists that there is a bargain of some kind; otherwise, the employee would not be working. 1 H. Perritt, Employee Dismissal Law and Practice (3d Ed.1992) § 4.32 at 326. Torosyan v. Boehringer Ingelheim Pharmaceuticals, Inc., 234 Conn. 1, 13 (1995).

1. Express

The employment contract may be a single written document containing express terms, or it may consist of more than one document, such as an offer letter and a separate written acceptance. The existence of a contract is a question of fact to be determined by the trier considering all the evidence. To form a valid and binding contract in Connecticut, there must be a mutual understanding between the parties of the terms that are definite and certain. For an offer and acceptance sufficient to create an enforceable contract, both the offer and the acceptance must be based on an identical understanding of the parties. L & R Realty v. Connecticut National Bank, 53 Conn. App. 524, 534, cert. denied, 250 Conn. 901 (1999).

2. Collective Bargaining Agreement

Most municipal employees in Connecticut enjoy protection of a collective bargaining agreement, which is a form of express contract. The Municipal Employee Relations Act ("MERA"), *Conn. Gen. Stat.* § 7-466 et seq., allows employees to form and join unions to negotiate with the municipal employer. MERA protects in two ways: First, it establishes a system of collective bargaining which typically results in a collective bargaining agreements between the town and union which requires "just cause" for any discipline; and, second, it makes dismissal of an employee illegal if the grounds for dismissal involve retaliation for exercising any of the rights under MERA. *Conn. Gen. Stat.* § 7-471(3) requires a single bargaining unit in each police department which consists of the uniformed and investigatory employees of the department. *Conn. Gen. Stat.* § 7-467(2) definition of "employee" excludes department head as defined by § 7-467(4). MERA excludes the police chief as an employee and does not afford any protection to the chief.

3. Implied Policies, Practices and Manuals

A contract may be *implied* in fact, but similar to an express contract, depends on *actual* agreement. Coelho v. Posi-Seal International, Inc., 208 Conn. 106, 111-12 (1988); Pavlisak v. Bridgeport Hospital, 48 Conn. App 580, 593 (1998). An implied employment contract may be enforceable under the doctrine of promissory estoppel in order to avoid injustice to an employee who has detrimentally relied on "a clear and definite promise which a promisor could reasonably have expected to induce reliance" by the promisee. D'Ulisse-Cupo v. Board of Directors of Notre Dame High School, 202 Conn. 206, 213 (1987). To prevail on such an estoppel claim, the employee must prove by a fair preponderance of the evidence that the employer agreed, "either by words or action or conduct, to undertake some form of actual contract commitment" to the employee that the employee will not be discharged except for just cause. Torosyan v. Boehringer Ingelheim Pharmaceuticals, Inc., 234 Conn. 1, 15 (1995).

Connecticut courts also may review the employer's written policies and employee manuals to determine if these documents contain any protective promises. Statements in an employer's personnel manual under appropriate circumstances may establish an express or implied contract between employer and employee. Magnan v. Anaconda Industries, Inc., 193 Conn. 558, 564 (1984); *see generally* Dolak v. Sullivan, 145 Conn. 497, 503 (1958) (statements in written retirement plan gave evidence of an employer-employee contract); Tilbert v. Eagle Lock Co., 116 Conn. 357, 361-63 (1933) (assurances in employee benefit plan constituted enforceable promise to pay benefits in accordance with plan). In Finley v. Aetna Life & Casualty Co., 202 Conn. 190, 198-99 (1987), a Connecticut court held that terms in an employment or personnel manual may create an implied contract between an employer and employee, and that whether such a contract has been created is ultimately a question of fact for the trier of fact to determine. *See also*, Carbone v. Atlantic Richfield Co., 204 Conn. 460, 471-72 (1987) ("under appropriate circumstances, the terms of an employment manual may give rise to an express or implied contract between employer and employee").

If the handbook or manual does not contain express contract language that definitively states either that employees are "at-will" or that they may be terminated only for "just cause", the determination of what the parties intended to encompass in their contractual commitments remains a question of the intention of the parties and an inference of fact.

In the public sector, the Connecticut courts have expressed greater reluctance to find implied obligations and have refused to give effect to government-fostered "expectations" that, had they arisen in the private sector, may well have formed the basis for a contract or an estoppel. Fennell v. City of Hartford, 238 Conn. 809, 816 (1996) (pension manual created and distributed by pension commission of city could not confer any additional benefits not provided for by city's charter). Basically the court in Fennell noted that: "...implied contract claims in the public sector, based upon pension or employee manuals, would only invite endless litigation over both real and imagined claims of misinformation by disgruntled citizens and employees, imposing an unpredictable drain on the public fisc." *Id.*, at 816.

D. Statutory Rights

The General Assembly is the source of statutes and the rights established by statute. Generally, once a legislative body vests its citizens with certain statutory rights beyond those basic rights secured by the constitution, the constitution forbids the state or person acting under the color of law from depriving individuals of those statutory rights without due process of law.

State statute represents a source of rights for public employees. MERA provides an example of statutory rights created for municipal employees. *Conn. Gen. Stat. § 7-278*, the "just cause" statute which protects the police chief is a right based on statute.

E. Constitutional Rights

Public employees enjoy various constitutional protections for such rights as freedom of speech and freedom of religion under the first amendment; due process and equal protection under the Fourteenth Amendment. Private sector employees do not enjoy state or federal constitutional protections because no government or "state action" is involved. *But see, Conn. Gen. Stat. § 31-51q; Cotto v. United Technologies Corp.*, 251 Conn. 1 (1999). If a public employee may only be terminated for "cause", the employee has a property interest which is protected by the U.S. Constitution and which cannot be denied without due process. The same "wrongful discharge" suit brought against a private employer, if brought against the municipality, often becomes a constitutional rights suit.

F. Municipal Charter Rights

The charter serves as an enabling act, both creating power and prescribing the form in which power must be exercised by the municipality. *Fennell v. City of Hartford*, 238 Conn. 809, 813 (1996). A town, including its Commission and other commissions, has no source of authority beyond the charter. Municipal powers are measured and limited by the express language in which authority is given or by the implication necessary to enable them to perform some duty cast upon them by express language. *Perretta v. New Britain*, 185 Conn. 88, 92 (1981); *Turney v. Bridgeport*, 55 Conn. 412, 414 (1887); A board or commission is generally a creature of special legislation and as such can exercise only such powers as "are necessary to enable it to discharge the duties and carry into effect the objects and purposes of its creation." *Baker v. Norwalk*, 152 Conn. 312, 314 (1965); *Essex Leasing, Inc. v. Zoning Board of Appeals*, 206 Conn. 595, 604 (1988).

The city or town charter may be a source of rights for a public employee. *See, Beauregard v. City of Norwich*, 1998 WL 552662 (Conn. Super. 1998). Most Connecticut municipalities have adopted Charter provisions, ordinances, or civil service rules which prevent the discharge of employees without "cause." These provisions must be read closely to ascertain whether they may include the police chief. In some boroughs and towns, a literal maze of special acts, ordinances, and charter provisions may apply. *Conn. Gen. Stat. § 7-188* provides that a charter supersedes any inconsistent special act, often no substantial inconsistency exists between the earlier special acts and the charter. The charter may specifically adopt and incorporate special acts.

In many municipalities, employees are hired and promoted as part of a civil service system. The civil service law provides for promotion in governmental employment according to merit and fitness determined by competitive examination. *Resnick v. Civil Service Commission*, 156 Conn. 28, 30 (1968); *State ex rel. McNamara v. Civil Service Commission*, 128 Conn. 585, 588 (1942). A primary purpose of these laws is to guarantee that public sector jobs are secured on merit and fitness and further to free public employees from the fear of personal and political reprisal.

II. CONNECTICUT "JUST CAUSE" STATUTES

A. *Conn. Gen. Stat. § 7-278 – Police Chief*

Hearing prior to dismissal of municipal police head. Just cause requirement. Appeal

No active head of any police department of any town, city or borough shall be dismissed unless there is a showing of just cause by the authority having the power of dismissal and such person has been given notice in writing of the specific grounds for such dismissal and an opportunity to be heard in his own defense, personally or by counsel, at a public hearing before such authority. Such public hearing, unless otherwise specified by charter, shall be held not less than five nor more than ten days after such notice. Any person so dismissed may appeal within thirty days following such dismissal to the superior court for the judicial district in which such town, city or borough is located. Service shall be made as in civil process. Said court shall review the record of such hearing, and, if it appears upon the hearing upon the appeal that testimony is necessary for an equitable disposition of the appeal, it may take evidence or appoint a referee or a committee to take such evidence as it directs and report the same to the court with his or its findings of fact, which report shall constitute a part of the proceedings upon which the determination of the court shall be made. The court, upon such appeal, and after a hearing thereon, may affirm the action of such authority, or may set the same aside if it finds that such authority acted illegally or arbitrarily, or in the abuse of its discretion, with bad faith, malice, or without just cause.

(1949, Supp. § 96a; 1951, Supp. § 190b; 1955, Supp. § 425d; 1974, P.A. 74-183, § 178, eff. Dec. 31, 1974; 1976, P.A. 76-436, § 288, eff. July 1, 1978; 1982, P.A. 82-472, § 18, eff. June 14, 1982; 1983, P.A. 83-212.)

B. *Connecticut Statutes Comparable to Conn. Gen. Stat. § 7-278*

1. *Conn. Gen. Stat. § 7-302 – Fire Chief*

Hearing prior to dismissal of fire department head. Appeal

No active head of any fire department of any town, city or borough shall be dismissed unless he has been given notice in writing of the specific grounds for such dismissal and an opportunity to be heard in his own defense, personally or by counsel, at a public hearing before the authority having the power of dismissal. Such public hearing, unless otherwise specified by charter, shall be held not less than five nor more than ten days after such notice. Any person so dismissed may appeal within thirty days following such dismissal to the superior court for the judicial district in

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

(1949, Supp. § 96a; 1951, Supp. § 190b; 1955, Supp. § 425d; 1976, P.A. 76-436, § 289, eff. July 1, 1978; 1978, P.A. 78-280, § 1, eff. July 1, 1978.)

2. Conn. Gen. Stat. § 29-260(c) – Building Official

Municipal building official to administer code. Appointment. Dismissal

(c) No local building official may be dismissed under subsection (b) unless he has been given notice in writing of the specific grounds for such dismissal and an opportunity to be heard in his own defense, personally or by counsel, at a public hearing before the authority having the power of dismissal. Such public hearing shall be held not less than five nor more than ten days after such notice. Any person so dismissed may appeal within thirty days following such dismissal to the superior court for the judicial district in which such town, city or borough is located. Service shall be made as in civil process. Such court shall review the record of such hearing and if it appears that testimony is necessary for an equitable disposition of the appeal, it may take evidence or appoint a referee or a committee to take such evidence as it may direct and report the same to the court with his or its findings of fact, which report shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may affirm the action of such authority or may set the same aside if it finds that such authority acted illegally or abused its discretion.

3. Conn. Gen. Stat. § 29-300 – Fire Marshal

Hearing prior to dismissal. Appeal

No local fire marshal shall be dismissed unless he has been given notice in writing of the specific grounds for such dismissal and an opportunity to be heard in his own defense, personally or by counsel, at a public hearing before the authority having the power of dismissal. Such public hearing, unless otherwise specified by charter, shall be held not less than five nor

more than ten days after such notice. Any person so dismissed may appeal within thirty days following such dismissal to the superior court for the judicial district in which such town, city or borough is located. Service shall be made as in civil process. Said court shall review the record of such hearing and, if it appears upon the hearing upon the appeal that testimony is necessary for an equitable disposition of the appeal, it may take evidence or appoint a referee or a committee to take such evidence as it may direct and report the same to the court with his or its findings of fact, which report shall constitute a part of the proceedings upon which the determination of the court shall be made. The court, upon such appeal, and after a hearing thereon, may affirm the action of such authority, or may set the same aside if it finds that such authority acted illegally or arbitrarily or in the abuse of its discretion or with bad faith or malice.

(1949, Supp. § 96a; 1951, Supp. § 190b; 1955, Supp. § 425d; 1958 Rev., § 29-47; 1976, P.A. 76-436, § 610, eff. July 1, 1978; 1978, P.A. 78-280, § 1, eff. July 1, 1978.)

4. *Conn. Gen. Stat. § 7-276 – Members of Police Department*

Powers of Commissioners

Such boards shall have all of the powers given by the general statutes to boards of police commissioners, shall have general management and supervision of the police department of such town and of the property and equipment used in connection therewith, shall make all needful regulations for the government thereof not contrary to law and may prescribe suitable penalties for the violation of any such regulation, including suspension or removal from office of any officer or member of such police department. Such board shall have the sole power of appointment, promotion and removal of the officers and members of such police department, under such regulations as it adopts for the purpose, and such appointees shall hold office during good behavior and until removed for cause upon written charges and after hearing. The members of such police department shall have all such authority with respect to the service of criminal process and the enforcement of the criminal laws as is vested by the general statutes in police officers and constables.

III. THE POLICE CHIEF “JUST CAUSE” STATUTE

A. Legislative History

P.A. 83-212 added the “just cause” requirement to the already existing *Conn. Gen. Stat. § 7-278*. Before 1983, a police chief could not be dismissed without notice and a hearing conducted by the public authority having authority to dismiss, typically the Commission. If the dismissal was “arbitrary,” the superior court could set it aside. The General

Assembly enacted § 7-278 in 1949. P.A. 83-212 did not define "just cause" and the legislative history does not suggest any meaning other than the ordinary usage of the term. However, the ordinary usage is not necessarily clear to all readers.

Before 1983, the statute already prohibited "arbitrary" dismissal of the police chief and since the legislature did not intend merely to reenact the existing prohibition against arbitrary dismissals, "just cause" must mean more than preclusion of arbitrary dismissals.

Public Hearing February 24, 1983:

John Ambrogio: Supports bill to provide just cause as "simply a fair and equitable request...know of no police chief in Connecticut who serves a specific term of office...know of no chief who serves under a civil service position...very little guidance in way of removal of any chief of police. He serves at the whim of the appointing authority.

William Farrell: In City of New Haven...chief appointed by mayor...and not be removed but for just cause. Such cause will not be political. So in New Haven...do have a degree of security...police officers today enjoy the security provided by police union contracts which give them an opportunity to be heard on any and all grievances that they may raise...a police chief does not enjoy such benefits.

William Knapp: We seek to amend language only to require that dismissals be based on just cause. I think it most relevant to also point out what we do not seek. We do not seek to make it impossible to dismiss a police chief. We do not seek to even make it more difficult. ...We have no argument with the legitimate policing of any profession. We seek only to have a degree of justice applied to our status. Just cause is not new terminology in the law, in government, or in employer-employee relationships. It is commonly used terminology in the common law. Indeed our research indicates that every single police officer in the State of Connecticut is currently protected from dismissal without just cause. That is every officer except the police chief. Police officers feel the need of that protection because of the very nature of the job they do, it generates enemies. The honest police chief does also generate enemies no matter how proper and forthright their actions, and yet the phrase I'll have your badge is oftentimes still whispered by powerful people attempting to improperly sway decisions in selfish improper directions.

* * *

Just cause, justifiable cause, proper cause, obvious cause and cause all have the same meaning. There is no significant difference between them except that their use excludes near [sic] whim, or caprice. We most humbly urge that you recognize that politics and clear law enforcement do not always mix well and that police chiefs should not be dismissed by whim or caprice, but for just cause.

House of Representatives, Thursday April 28, 1983:

Rep. Gelsi: The chiefs of police of this state are not asking for any preferential treatment, only if they're going to be fired that they be fired for just cause.

Senate, Tuesday, May 10, 1983:

Senator Harper: The Bill would make it more difficult to dismiss a police chief, a municipal police chief by requiring that the local authority having dismissal powers show just cause as a condition for dismissal...responding to a question: to answer the question yes it does treat municipal police chiefs different in terms of dismissal than it would other local officials (department heads).

Senator Morano: I don't agree with my colleague on this side of the isle. I think that the time has come when we've got to address just cause for firing a police chief. I don't think it's a special piece of legislation at all.

B. Defining Specific Terms in *Conn. Gen. Stat. § 7-278*

1. Active Head:

Conn. Gen. Stat. § 7-278 refers to "active" police chiefs, not "acting" and a Connecticut court has interpreted the word as referring to full-time, working chiefs and not to someone who is inactive due to health or is retired. "Acting" simply connotes someone who is a temporary or interim appointee. *See, Kohn v. Town of Wilton*, 1997 WL 771570 (Conn. Superior Ct. 1997). Section 7-278 protects the chief from the moment the chief assumes the status as active head of the department and does not allow removal during any "probationary" period.

2. Just Cause:

(a) Familiar Term

Just cause is a familiar term in employment law; however, as noted, familiarity does not make the term easy to define. "No employee shall be disciplined or discharged except for just cause" is one of the shortest, simplest statements in any collective bargaining agreement; but, it is also one of the most frustrating to management. Why? Because, as arbitrators long have recognized, the "just cause" standard cannot be defined absolutely. *Koven and Smith, Just Cause The Seven Tests* (2nd Edition c1992)

(b) Connecticut Courts

Although “just cause” substantially limits managerial discretion, Connecticut courts have held that it simply means that employers are forbidden to act arbitrarily or capriciously; in other words, an employer who wishes to terminate an employee for cause must do nothing more rigorous than substantiate a proper reason for dismissal. Gaudio v. Griffin Health Services Corp., 249 Conn. 523, 539 (1999). “Just cause” implies a reasonable ground for removal as distinguished from a frivolous or incompetent ground. Casella v. Civil Service Commission of New Britain, 202 Conn. 28, 37 (1987); Molino v. Board of Public Safety, 154 Conn. 368, 374-75 (1966); Riley v. Board of Police Commissioners, 147 Conn. 113, 118 (1960); McNiff v. Waterbury, 82 Conn. 43, 46 (1909). In Obeda v. Board of Selectmen of Brookfield, 180 Conn. 521, 522-523 (1980), the court explained that the “cause” must be one which specifically relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. The sufficiency of cause is for the Commission to decide, but the question of whether the cause assigned constitutes grounds for removal, as a matter of law, is a question for the judiciary. Casella, supra, at 37; Molino, supra, at 375.

(c) State Employee “Just Cause” More Explicit

Many state employees participate in collective bargaining agreements which contain a “just cause” requirement. However, a state regulation defines “just cause” for state employees and is typically referenced in the collective bargaining agreements. Under State Reg. 5-240-1a(c), “Just cause” means any conduct for which an employee may be suspended, demoted or dismissed and includes the following:

1. Conviction of a felony.
2. Conviction of a misdemeanor committed while on duty.
3. Conviction of a misdemeanor committed off duty which could impact upon the performance of job responsibilities.
4. Offensive or abusive conduct toward the public, co-workers, or inmates, patients or clients of State institutions or facilities.
5. Two successive unsatisfactory service ratings, if filed within two years of each other.
6. Fraud or collusion in connection with any examination or appointment in the classified service.

7. Theft, willful neglect or misuse of any state funds, property, equipment, material or supplies.
8. Deliberate violation of any law, state regulation or agency rule.
9. Absence without leave for five or more working days or failure to return to duty within five working days following authorized leave.
10. Use of and/or intoxication from alcohol or illegal drugs while on duty.
11. Neglect of duty, or other employment related misconduct.
12. Insubordination, including but not limited to failure to work overtime if directed to do so.
13. Engaging in any activity which is detrimental to the best interests of the agency or of the state.

(d) Arbitrators' View of "Just Cause"

The central concept for employee discipline and discharge is "just cause" and the forum to resolve a dispute is typically arbitration. Much has been written on the subject of "just cause" in arbitration awards and labor treatises. In *Brand, Discipline and Discharge in Arbitration* (BNA, c1998) at 29-30, the author describes "just cause:"

Just cause is not an easily defined concept. In one respect, just cause can be shorthand for what an arbitrator thinks is fair. If, after considering the facts, the arbitrator concludes that the employer failed to treat the employee fairly, she will find there was no just cause for the discipline. Or she will find there was just cause if the employer treated the employee fairly. Since individual notions of fairness vary and the specific facts that lead to discipline are often unique, it can be difficult to extract the principle that led this arbitrator to her conclusion. Over many arbitrators and many cases, however, some principles of just cause emerge.

Two principles that are central to just cause are employed by all arbitrators: due process and progressive discipline. Due process, as it is used in determining just cause, has its origins in both constitutional and criminal law. Arbitrators have made analogies to both types of law in creating a

hybrid called "industrial due process." Industrial due process encompasses the employer's procedural responsibilities in disciplining employees. In general, arbitrators apply principles of industrial due process when determining whether an employer had just cause for discipline.

The basic elements of just cause which different arbitrators have emphasized have been reduced by Arbitrator Carroll R. Daugherty to seven tests. These famous tests, in the form of questions, represent the most specifically articulated analysis of the just cause standard, as well as an extremely practical approach. The comprehensiveness of these tests and their utility, have lead to the widespread acceptance in the 25 years following their first publication in 1966.

A "no" answer to one or more of the questions means that just cause either was not satisfied or at least was seriously weakened in that some arbitrary, capricious, or discriminatory element was present.

1. *Notice:* Did the Employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?
2. *Reasonable Rule or Order:* Was the Employer's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the Employer's business, and (b) the performance that the Employer might properly expect of the employee?
3. *Investigation:* Did the Employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. *Fair Investigation:* Was the Employer's investigation conducted fairly and objectively?
5. *Proof:* At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
6. *Equal Treatment:* Has the Employer applied its rules, orders and penalties even-handedly and without discrimination to all employees?

7. *Penalty*: Was the degree of discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee's *proven* offense, and (b) the record of the employee in his service with the Employer?

Koven and Smith, Just Cause The Seven Tests (2nd Edition c 1992) at 23-24.

3. Opportunity to be Heard in Defense

Due process of law in general requires not only that there be due notice of the charges, but also, that a meaningful hearing occur so that the parties involved have a right to produce relevant evidence, and an opportunity to know the facts on which the Commission is asked to act, to cross-examine witnesses and to offer rebuttal evidence. *Conn. Gen. Stat.* § 7-278 simply recites that this opportunity to be heard will be available.

4. Public hearing before the appointing authority

The phrase "...hearing before such authority" has been found to mean a hearing before the "authority" within the municipality which hires and fires the police chief. This "authority" can be a Board of Police Commissioners, a mayor, a town council or board of selectmen as described by the pertinent town or city charter. *See, Conn. Gen. Stat.* § 7-276. Having a "hearing" before the "authority" which proposes to terminate the chief leads to questions of bias and partiality. *See, Section V.G., infra.*

IV. THE NATURE AND EFFECT OF PROPERTY INTERESTS

A. "Property Interests" In General

The courts recognize that "at will" public employees do not receive a constitutionally protected property interest in employment; but, once the "at will" relationship is modified by state or local law, the public employee may obtain a protected property interest. The preeminent source of a property right in employment cases is the "for cause" requirement for suspension and removal. The hallmark of property is this individual entitlement grounded in state law, which cannot be removed except for "cause". Bartlett v. Krause, 209 Conn. 352, 367 (1988). "Property interests are not created by the Constitution, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law..." Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538, 105 S.Ct. 1487, 84 L.Ed.2d 494, 118 LRRM 3041 (1985).

In Clisham v. Board of Police Commissioners, 223 Conn. 354, 360-61 (1992), the Connecticut Supreme Court held that a Naugatuck police chief who could not be terminated without just cause under § 7-278 had a protected property interest in employment. In Bartlett v. Krause, 209 Conn. 352, 367 (1988), a fire marshal received a

property right in continued employment under *Conn. Gen. Stat.* § 29-297. Due process rights attach once it is determined that property interest exists and the employment cannot be terminated without a finding of cause at a due process hearing held at a meaningful time in a meaningful manner. Cleveland Board of Education v. Loudermill, *supra*, 470 U.S., at 538.

Once the public employee obtains a protected property interest, the question shifts to: what process is due? While state or local law establishes the property interest, federal law will ordinarily determine the minimum procedures that are constitutionally necessary. The courts often consider the question case by case, balancing the respective interests of the municipal employer and employee. This balancing effort sometimes results in pre-termination and post-termination hearing issues. Most courts require a pre-termination notice of reasons for discharge and a meaningful opportunity to rebut those reasons; however, the purpose of the pre-termination hearing is typically not to determine whether the dismissal is proper, but rather, simply to provide an initial check against a mistaken decision. Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494, 118 LRRM 3041 (1985). Courts also have held that a post-termination hearing which affords the employee an adequate opportunity to respond is sufficient to cure any deficiencies in the pre-termination hearing. *E.g.*, Thompson v. Bass, 616 F.2d 1259 (5th Cir. 1980). The public employer cannot deprive the employee of this property interest in continued employment without affording some procedural due process. Goss v. Lopez, 419 U.S. 565, 573-74, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); Memphis Light Gas & Water Division v. Craft, 436 U.S. 1, 11-12, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978).

B. Property Interests and Police Chief Dismissal

Conn. Gen. Stat. § 7-278 establishes a clear property interest in continuing employment which requires the municipality to afford procedural due process to the police chief. However, a statute which creates the *substantive* right may also describe the *procedure* for exercise of that right. *Conn. Gen. Stat.* § 7-278 details how much process is due, i.e. describes the extent of the procedural safeguards required before the interest may be taken away. Clisham v. Board of Police Commissioners of Borough of Naugatuck, 223 Conn. 354 (1992). The court, in Anziano v. Board of Police Commissioners of the Town of Madison, 229 Conn. 703, 707 (1994), specifically emphasized that Anziano enjoyed a property interest in his position as chief of police that was protected by the due process clause of the fourteenth amendment to the United States constitution, but that did not prevent his hearing from being held before the police commission which proposed charges against him.

C. Property Interests and Suspension of the Police Chief Without Pay

A substantial majority of jurisdictions which have addressed suspension appear to follow the rule that the suspension of an officer pending a determination of alleged misconduct is accepted as fair and necessary. Jurisdictions that have addressed the issue follow the statement in 63 Am.Jur.2d, Public Offices and Employees, § 290: "The suspension of an

officer pending his trial for misconduct seems to be universally accepted as fair and often necessary." Ambrogio v. Carusone, 1993 WL 137695 (Conn. Super. 1993); *see also*, 56 Am.Jur.2d, Municipal Corporations etc., § 312.

The power to remove, in the absence of statutory provision to the contrary, is considered an incident of the power to appoint. The power of suspension is an incident of the power of removal. Burnap v. United States, 252 U.S. 512, 515 (1920). As a general rule a public officer may be suspended from office pending determination of the existence of grounds for his removal from office, the power to suspend being considered as included in the power of removal, since suspension is merely a less severe disciplinary measure than removal. Clisham v. Board of Police Commissioner of Borough of Naugatuck, 1990 WL 283668 (Conn. Super. 1990).

In McKeithen v. Stamford, 149 Conn. 619 (1962), the Connecticut Supreme Court observed that "[I]n the absence...of statutory restrictions, a chief of police who is given general administration, supervision and discipline of a police department has a right to suspend, for a reasonable time, an officer who...is awaiting trial on a criminal charge... Such a power is almost necessary to insure the proper operation of a police department." *See also*, Adams v. Rubinow, 157 Conn. 150, 165 (1968). Similar reasoning may be applied by the appointing authority to suspend the chief.

See, Bartlett v. Krause, *supra*, 209 Conn. at 378 (noting difference between termination as "grave sanction of outright severance" and "temporary suspension" in assessing need for procedural safeguards guaranteed by due process); Geren v. Board of Education, 36 Conn. App. 282, 291 (1994), *cert. denied*, 232 Conn. 907 (1995) (liberty interest under due process clause impaired when employee suspended from employment in manner that might damage his standing in community or might impose on him stigma or disability foreclosing his freedom to take advantage of other employment opportunities); Honis v. Cohen, 18 Conn. App. 80, 85 (1989) (personnel decisions do not constitute deprivation of property interest unless termination of employment involved).

Gilbert v. Homar, 520 U.S. 924 (1997) involved unpaid suspension without notice and opportunity for a hearing of a campus police officer arrested in a drug raid and charged with felony drug offense. The officer was ultimately provided with notice of the information against him, given an opportunity to respond and demoted to groundskeeper position. Court rejected as indefensible an absolute rule that would require suspension without pay to be preceded in all instances by notice and opportunity to be heard. Court indicated where impractical to provide pre-deprivation process post deprivation process satisfies the requirements of due process. The arrest and filing of charges serves the purpose of a pre-deprivation process assuring that reasonable grounds for the suspension existed.

D. Property Interests and Relief of the Police Chief from Duty With Pay

In Hunt v. Prior, 236 Conn. 421 (1996), a police captain challenged his relief from duty although he received full pay and benefits. The officer claimed a politically-motivated vendetta, but pointed to no state law property interest entitlement preventing his suspension with pay, nor did he identify any authority to support the contention that a public employer who suspends an employee with pay may nevertheless violate due process protections. Courts have consistently concluded that a suspension with pay does not implicate an employee's constitutionally protected property interest. See, e.g., Swick v. Chicago, 11 F.3d 85, 87 (7th Cir. 1993); Hicks v. Watonga, 942 F.2d 737, 746 n. 4 (10th Cir. 1991); Royster v. Board of Trustees, 774 F.2d 618, 621 (4th Cir. 1985), *cert. denied*, 475 U.S. 1121, 106 S.Ct. 1638, 90 L.Ed.2d 184 (1986). Hunt also claimed that even though he was suspended with pay, he lost the opportunity to seek a promotion, and to receive private duty wages and personal use of a police vehicle. The court ruled that no entitlement of this nature reached the level of a constitutionally protected property interest or involved any protected status.

V. THE CONN. GEN. STAT. § 7-278 PROCEDURE TO ESTABLISH JUST CAUSE

A. Standards of Appropriate Due Process under § 7-278

The following are attributes of due process mentioned in Anziano v. Board of Police Commissioners, 229 Conn. 703 (1994):

- (i) adequate written notice of the charges;
- (ii) access to copies of all investigative reports in advance of the hearing;
- (iii) representation by counsel;
- (iv) permitted to cross-examine each witness;
- (v) able to present evidence on behalf;
- (vi) permitted to present a closing argument;
- (vii) permitted to challenge the legal advice given to the board;
- (viii) able to review the proceedings which were recorded by transcription; and,
- (ix) afforded timely written notice of the board's findings.

Administrative hearings, although informal and often conducted without regard to the strict rules of evidence, must be conducted so as not to violate the fundamental rules of natural justice. Due process requires not only that there be due notice of the hearing, but that, at the hearing, the parties involved have a right to produce relevant evidence, and an opportunity to know the facts on which the board is asked to act, to cross-examine witnesses and to offer rebuttal evidence. Town of South Windsor v. South Windsor Police Union Local 1480, 57 Conn. App. 490, 505 (2000).

B. Meaning and Timing of a "Hearing"

Black's Law Dictionary defines a hearing as "[a] proceeding of relative formality (though generally less formal than a trial), generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and evidence presented." Black's Law Dictionary (6th Ed.1990). The Connecticut Appellate Court has stated that "[a] 'hearing' can be a proceeding in the nature of a trial with the presentation of evidence, it can be merely for the purpose of presenting arguments, or, of course, it can be a combination of the two... Not only does a hearing normally connote an adversarial setting, but usually it can be said that it is any oral proceeding before a tribunal. Connecticut cases consistently recognize the generally adversarial nature of a proceeding considered a 'hearing,' in which witnesses are heard and testimony is taken." Dortenzio v. Freedom of Information Commission, 48 Conn. App. 424, 434 (1998). *Compare*, Rybinski v. State Employees' Retirement Commission, 173 Conn. 462, 469-70 (1977).

A requirement of the Due Process Clause includes "that an individual be given the opportunity for a hearing before he is deprived of any significant property interest. Boddie v. Connecticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971). This principle requires 'some kind of hearing' prior to the discharge of an employee who has a constitutionally protected property interest in his employment." Cleveland Board of Education v. Loudermill, *supra*, 470 U.S. at 542, 105 S.Ct. at 1493.

The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved. In general, something less than a full evidentiary hearing is sufficient prior to adverse administrative action. *Id.*, at 545; 105 S.Ct. at 1495. The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. *Id.*, at 546; 105 S.Ct. at 1495; *see also*, Bartlett v. Krause, 209 Conn. 352 (1988). The term 'hearing' leaves room for flexibility in responding to variations in the required due process. Not all situations call for the same level of procedural safeguards. Bartlett v. Krause, 209 Conn. 352, 376 (1988); *H. Friendly, Some Kind of Hearing*, 123 U. Pa. L.Rev. 1267, 1270 (1975), observed that the term 'hearing,' is "a verbal coat of many colors."

Administrative due process requires, in its essence, that a party be given notice of the charges against him and an opportunity to be heard by a fair and impartial body. The procedure must be tailored, in light of the decision to be made, to the circumstances of those who are to be heard to insure that the hearing is, in fact, meaningful. Salmon v. Department of Health and Addiction Services, 58 Conn. App. 642, 654 (2000); Mathews v. Eldridge, 424 U.S. 319, 349, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

Conn. Gen. Stat. §7-278 does not prevent relief from duty before the hearing, but does support the requirement of a hearing before termination. Reading *Conn. Gen. Stat.* § 7-276 with § 7-278 supports the requirement of holding the hearing before the dismissal.

C. Who Conducts the §7-278 Hearing

Conn. Gen. Stat. § 7-278 requires the person or body with authority to appoint and remove to conduct the hearing. *Conn. Gen. Stat. § 7-278* expressly refers to the “authority having the power of dismissal.” *Conn. Gen. Stat. § 7-278* also informs that the hearing will be a public hearing, unless the municipal charter directs otherwise and will be held on a specific timetable. Clearly, “before such authority” refers to the municipal official or Commission which has the authority to hire and fire the chief. This “authority” will vary from town to town. In Anziano v. Board of Police Commissioners of Town of Madison, 229 Conn. 703 (1994), Anziano claimed that the Commission violated his constitutional rights when the Commission held his hearing because it had a dual role which encompassed both investigation and adjudication. The court disagreed absent a showing of substantial prejudice.

D. Influence of Charter, Special Act or Ordinance on § 7-278 Proceedings

The municipal charter, special act or ordinance may also impact the dismissal proceedings. Any charter provision or special act which may apply must be interpreted and applied in conjunction with *Conn. Gen. Stat. § 7-278*. In Sansone v. Clifford, 219 Conn. 217 (1991), former building inspector brought action against the city seeking reinstatement to position and the court held that a city charter provision that building inspector would have a two year term rather than the statute for four year term fixed the term of office of a building inspector in a charter home rule town. If a chief works in a town which prescribes a fixed term of office for the chief, this term of office may trump *Conn. Gen. Stat. § 7-278*.

Conn. Gen. Stat. § 7-278 also does not prescribe the manner in which an appointing authority must conduct the public hearing or any specific standards to apply. By example, in Clisham v. Board of Police Commissioners of the Borough of Naugatuck, 1991 WL 158159 (Conn. Super. 1991), the court addressed the appropriate standard to test the board’s removal decision. A 1953 Connecticut Special Act created the Naugatuck Board of Police Commissioners and provided that removal could be ordered for malfeasance or refusal to perform duty. The court had to coordinate the special act with *Conn. Gen. Stat. § 7-278* and determined that the special act preempted the standard because the court could find no intent in § 7-278 to repeal or alter the special act. The same result was affirmed on appeal. See, Clisham v. Board of Police Commissioners of the Borough of Naugatuck, 223 Conn. 354, n. 12 (1992). The charter may define “just cause;” it may include procedural rules for the hearing panel, as well as other aspects of the employment relationship or removal procedure, such as a voting requirement.

E. Witness Credibility

The credibility of witnesses and the determination of factual issues are matters within the province of the administrative board. Town of South Windsor v. South Windsor Police Union Local 1480, 57 Conn. App. 490 (2000); Lawrence v. Kozlowski, 171 Conn. 705, 708 (1976), *cert. denied*, 431 U.S. 969, 97 S.Ct. 2930, 53 L.Ed.2d 1066 (1977).

F. Burden of Proof

Most courts have indicated that fair preponderance of the evidence is sufficient, although some have increased the standard to "clear and convincing." Anziano v. Board of Police Commissioners, 1993 WL 465600 (Conn. Super. 1993) (In Anziano the Board actually applied the clear and convincing evidence standard and rejected the "beyond reasonable doubt" standard advocated by the chief). A party satisfies this fair preponderance burden if the evidence induces in the mind of the trier of fact a reasonable belief that the outcome is more probable than not or that the fact asserted is true. The quality of evidence controls not quantity. Clear and convincing evidence falls somewhere between the belief required in the ordinary civil case, more probable than not, and the belief required in the criminal case. Clear and convincing evidence suggests the result as highly probable or substantially greater probability that the facts are true rather than false. *See*, Tait's Handbook of Connecticut Evidence (3rd Edition, c 2001) at § 3.5.2.

G. Impartial and Unbiased Hearing Officials

Due process does not require that members of administrative agencies adhere in all respects to the exalted standards of impartiality applicable to the judiciary. Schweiker v. McClure, 456 U.S. 188, 197 N. 11, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982). The mere appearance of bias that might disqualify a judge will not disqualify an arbitrator. Florasynth, Inc. v. Pickholz, 750 F.2d 171, 173-74 (2d Cir. 1984). *See*, Clisham v. Board of Police Commissioners, 223 Conn. 354, 361-62 (1992).

A presumption of impartiality attends administrative determinations, and the burden of establishing a disqualifying interest on the part of an adjudicator rests upon the one seeking disqualification. Anziano v. Board of Police Commissioners of the Town of Madison, 229 Conn. 703, 709 (1994). *See also*, Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975).

Importantly, the Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions." Bishop v. Wood, 426 U.S. 341, 350, 96 S.Ct. 2074, 2080, 48 L.Ed.2d 684 (1976); Hunt v. Prior, 236 Conn. 421 (1996).

In Anziano v. Board of Police Commissioners of the Town of Madison, 229 Conn. 703, 709 (1994), Anziano failed to establish that any pre-adjudicative involvement of board of police commissioners in his disciplinary proceedings resulted in prejudice and deprived him of his due process right to impartial tribunal; although two members of board commenced inquiry into complaints against the chief by interrogating the chief, and although the board itself conducted further interrogations despite hiring outside investigators, such activities did not show that board could not conscientiously and fairly consider charges against chief, particularly in view of fact that members involved in interrogation did not participate in adjudicative hearings.

In Schnabel v Rocky Hill Town Manager, 1992 WL 315955 (Conn. Super. 1992), Schnabel brought an action to enjoin the Town Manager from proceeding with a dismissal hearing until an impartial hearing officer was appointed to conduct the hearing. The court determined that Schnabel had a property interest in his job but concluded that Schnabel was unlikely to succeed on his claim of bias. The court mentioned that no evidence existed that the Town Manager had developed any opinion about the facts of the case before objective review of the facts and that there is no presumption that an adjudicator who also acts as a prosecutor is biased. The further claims of bias, that the Manager was under political pressure to dismiss Schnabel and also a defendant in a pending suit brought by Schnabel, were disregarded by the court as allegations of potential, not actual, bias.

To overcome the presumption of impartiality that attends administrative determinations, a plaintiff must demonstrate either actual bias or the existence of circumstances indicating "a probability of...bias too high to be constitutionally tolerable." Rado v. Board of Education, 216 Conn. 541, 556 (1990).

A tribunal is not impartial if it is biased with respect to the factual issues to be decided. Clisham v. Board of Police Commissioners, 223 Conn. 354 (1992). The test for disqualification has been succinctly stated as being whether a disinterested observer may conclude that the board has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it. Clisham v. Board of Police Commissioners, *supra*, at 362.

A claim of bias also must be raised in a timely manner and the failure to raise the claim for disqualification with reasonable promptness after learning of the ground for such claim ordinarily constitutes a waiver. Clisham v. Board of Police Commissioners, 223 Conn. 354 (1992); Henderson v. Department of Motor Vehicles, 202 Conn. 453, 462 (1987).

H. Combination of Functions – Investigative – Prosecutorial – Adjudicative

Professional disciplinary proceedings may combine investigative and adjudicative functions without violating due process. Anziano v. Board of Police Commissioners of the Town of Madison, 229 Conn. 703, 709 (1994); In re Zoarski, 227 Conn. 784, 797 (1993); e.g., Withrow v. Larkin, 421 U.S. 35, 47-55, 95 S.Ct. 1456, 1464-68, 43 L.Ed.2d 712 (1975).

The law of administrative adjudication generally permits combining in one board or even one individual both investigative and adjudicative responsibilities. It does not violate due process for the same authority which initiated the subject of the hearing to listen to and determine its outcome as long as that authority gives the person appearing before it a fair, open and impartial hearing. See, Petrowski v. Norwich Free Academy, 2 Conn. App. 551, 554 n. 5 (1984), *rev'd on other grounds*, 199 Conn. 231 (1986), *appeal dismissed*, 479 U.S. 802 (1986). An administrative agency can be the investigator and adjudicator of the same matter without violating due process. Withrow v. Larkin, *supra*, at 46-55, 95

S.Ct., at 1464 (1975); Petrowski v. Norwich Free Academy, *supra*, 2 Conn. App., at 571 (Borden, J., dissenting). Petrowski concerned attorneys who were members of the Norwich Free Academy's board of trustees which terminated a teacher's tenure and who were also the attorneys for the board of trustees in some unrelated matters. The court held the attorneys' relationship as public officials to the teacher was not such as to call into question whether the members' personal interest reasonably might conflict. *Id.*, at 241.

I. Findings and Conclusions

As mentioned, the hearing protocol and board voting may be controlled by Special Act, local ordinances, or charter provisions. In Clisham, the board was established by special act which provided that removal required an affirmative vote of all five members of the board. Clisham v. Board of Police Commissioners of the Borough of Naugatuck, 1991 WL 158159 (Conn. Super. 1991). Hearing protocol and voting are important. Any conclusion reached by the board after hearing must be based on factual findings which support the conclusions. For example, in Naugatuck, which requires five affirmative votes, if the board found facts to support a single violation by a 3-2 vote and then voted 5-0 for removal, the removal vote may violate the spirit of *Conn. Gen. Stat. § 7-278* because two of the votes for removal arguably have no reason at all.

VI. THE SCOPE OF REVIEW AFTER THE § 7-278 HEARING

A. Limited Review Appeal Under *Conn. Gen. Stat. § 7-278*

An aggrieved party taking a statutory appeal must comply strictly with the statutory provisions by which the right of appeal is created. These provisions are mandatory, and, if not complied with, the appeal will be dismissed. *Conn. Gen. Stat. § 7-278* specifically authorizes an appeal within thirty (30) days and that the court will review the record.

An appeal under *Conn. Gen. Stat. § 7-278* is an administrative appeal. Schnabel v. Shew, 1994 WL 240426 (1994); O'Donnell v. Police Commission, 174 Conn. 42, 426 (1978). The standard of review remains similar to the standard of review in general for administrative appeals under *Conn. Gen. Stat. § 4-183(j)*. *See, Vacon v. Board of Commissioner of Enfield Fire District No.1*, 2000 WL 1058353 (Conn. Super. 2000); Tomlinson v. Board of Education, 226 Conn. 704 (1993) (teacher tenure appeal follows usual standard for administrative appeals). The court in Domestic Violence Services of Greater New Haven, Inc. v. FOIC, 47 Conn. App. 466, 469-70 (1998) described the limits on the court's authority to review:

The scope of permissible review is governed by § 4-183(j) and is very restricted... Neither this court nor the trial court may retry the case or substitute its own judgment for that of the [agency]... The conclusion reached by the [agency] must be upheld if it is legally supported by the evidence... The credibility of witnesses and the determination of factual issues are matters within the province of the administrative agency, and, if

there is evidence...which reasonably supports the decision of the commissioner, we cannot disturb the conclusion reached by him... Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.

B. Court Will Not Substitute Its Judgment

The role of the Court is limited to reviewing the record. The court does not retry the case, determine facts or pass on the credibility of witnesses. Anziano v. Board of Police Commissioners, 1993 WL 465600 (Conn. Super. 1993). The review involves an examination of the record; and, if the decision of the Commission is reasonably supported by the record the court will sustain the Commission's decision. Anziano v. Board of Police Commissioners, 1993 WL 465600 (Conn. Super. 1993). Whether a court hearing the matter *de novo* would have made a different decision is of no consequence. Absent showing of substantial prejudice, the Commission decision will not be reversed. Anziano v. Board of Police Commissioners of the Town of Madison, 229 Conn. 703, 712 (1994).

C. Additional Evidence under § 7-278

Conn. Gen. Stat. § 7-278, if appropriate, allows the court to hear additional evidence. Any question whether the court will receive additional evidence invokes the discretion of the court. If a chief intends to request additional evidence, he/she must submit a motion documented with ample reasons. If the case reaches the court with a complete stenographic record it is unlikely that the chief can provide any credible reason for the court to allow additional evidence. *See, Anziano v. Board of Police Commissioners*, 1993 WL 465600 (Conn. Super. 1993).

VII. THE INFLUENCE OF CONTRACTS ON "JUST CAUSE"

A. Overview

The use of employment contracts for the police chief has become popular among Connecticut municipalities. A contract may be a source of expanded protections for the police chief, but too often the municipality perceives the contract as the method to reduce protections. The contract may impact "just cause" by containing a term of years and an expiration, by defining "just cause," by establishing an alternative forum to hold the hearing, by defining non-renewal rights, and a host of other related topics.

B. Modification of Rights under *Conn. Gen. Stat. § 7-278*

Procedural due process requires the existence of a property interest in *continued* public employment. If the plain language of the employment contract provides for a term of years which expire, then the chief retains no interest beyond the expiration date. Once the Commission or Mayor advises the chief that municipality does not wish to enter a

successor agreement the chief no longer retains an entitlement to continued employment past the date of expiration.

Gardiner v. Town of Fairfield, 51 F. Supp. 2d 158 (D. Conn. 1999) provides an example: once Commission decided not to enter a successor contract with the head of local fire department and contract expired, fire chief no longer an "active" fire chief and further was not dismissed because by terms of contract employment expired; Commission merely voted not to renew contract; it did not vote to fire or relieve of official duties. On other hand if Commission sought to dismiss chief before his employment agreement terminated it would be required to follow *Conn. Gen. Stat.* § 7-302.

C. Modification of Rights after Town/City Initiates Dismissal Proceedings

A chief may enter a written agreement or stipulation with the municipality once the municipality begins removal action. Alternate procedures may be agreed to after the municipality begins the removal effort. The chief and municipality will be bound by such a stipulation. If the stipulation covers more than just procedure, and includes facts, these facts will be conclusive.

A party is bound by a stipulated admission unless the court, in the exercise of a reasonable discretion, allows the admission to be withdrawn, explained or modified. Judicial admissions may be expressed in different forms, including a written stipulation. C. Tait, Handbook of Connecticut Evidence (3rd Ed. c2001) § 8.16.3(b). No claim which contradicts the stipulation will normally be considered by a court. Andrews v. Olaff, 99 Conn. 530 (1923).

Conn. Gen. Stat. § 7-278 provides no authority for arbitration; however, the parties may agree and stipulate to use arbitration as the forum for the "hearing." In such instance, the arbitration is called voluntary and is a creature of the agreement of the parties. The parties themselves, by written agreement, define the powers of the arbitrators. American Universal Ins. Co. v. DelGreco, 205 Conn. 178, 185 (1987); *see* Stratford v. International Assn. of Firefighters, AFL-CIO, Local 998, 248 Conn. 108, 122 (1999); O & G/O'Connell Joint Venture v. Chase Family Ltd. Partnership No. 3, 203 Conn. 133, 145 (1987). When the parties have established the authority of the arbitrator, the scope of the parties' agreement may also delineates the extent of judicial review of the award. Garrity v. McCaskey, 223 Conn. 1, 4 (1992), citing American Universal Ins. Co. v. DelGreco, *supra*, at 185. If the parties have not restricted the scope of the arbitrator's authority, the resulting award is not subject to *de novo* review even for errors of law so long as the award conforms to the submission. Garrity v. McCaskey, *supra*, at 4; Hartford v. Board of Mediation & Arbitration, 211 Conn. 7, 14 (1989).

A voluntary arbitration award, unlike the decision of an administrative agency, is not subject to a full range of judicial review. In Garrity v. McCaskey, *supra*, at 6, the court listed three recognized grounds for vacating an award: "(1) the award rules on the constitutionality of a statute; (2) the award violates clear public policy; or (3) the award contravenes one or more of the statutory proscriptions of § 52-418(a)." The statutory

grounds are very limited and restricted to (1) procurement of the award by "corruption, fraud or undue means;" (2) "evident partiality or corruption" of an arbitrator; (3) misconduct in refusing to postpone the hearing for sufficient cause; or (4) instances where "the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made."