

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
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 IN
OPPOSITION TO PETITION
AND IN SUPPORT OF
CROSS-MOTION TO QUASH

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"), seeking to compel Respondent to comply with a non-judicial subpoena *ad testificandum* and *duces tecum*, dated March 4, 2010.

3. This affirmation is also submitted in support of Respondent's cross-motion pursuant to CPLR §2304 to quash or modify said subpoena. For the reasons described *infra*, Petitioner's application should be denied and the cross-motion to quash granted.

The Parties

4. Respondent is the President of the Suffolk County Association of Municipal Employees, Inc. (“AME”), the certified employee organization representing most non-uniformed employees of the County of Suffolk (“County”).

5. Petitioner Commission was established by the County Legislature with the mandate to, *inter alia*, enforce the Suffolk County Code of Ethics.¹ See Local Law No. 44-1988; Suffolk County Charter Article XXX.

6. The Commission is comprised of three members, with one appointed by the County Executive. Suffolk County Charter, Article XXX § C30-2(A). The Chairman of the Commission is designated by the County Executive from among the three members. *Id.*, § C30-2(C). Said Chairman serves at the pleasure of the County Executive. *Id.*

7. The person who is the subject of the inquiry discussed in the subpoena is a former employee of the County, whom Petitioner has declined to identify in this proceeding. While Respondent does not agree that protection of the identity of the target of the Commission’s inquiry is required in the course of this proceeding or even specifically authorized, the non-disclosure convention is followed. Having said that, Respondent submits the Court should not infer from this non-disclosure any conclusions about the merits of Petitioner’s claims or that Respondent concedes there is any merit to Petitioner’s claims. Moreover, as discussed below in relation to the Legislature’s bi-partisan initiated probe into the possibility that the Ethics Commission is targeting individuals at the behest of County

¹ Codified in Article XXX of the Suffolk County Administrative Code.

Executive Levy, this non-disclosure prevents the Court from properly evaluating whether there is a lawful basis for the inquiry herein and the subpoena allegedly issued in connection with said inquiry.

Procedural History

8. By subpoena dated March 4, 2010, Respondent was subpoenaed to appear before the Commission to give testimony and produce records on March 23, 2010 with respect to “the engagement of [an individual], whether as consultant, strategist, employee, independent contractor or any other relationship, by the Association of Municipal Employees during the period June 1, 2007 through the date hereof”. (See Subpoena annexed as Exhibit “A” to Affirmation of Steven G. Leventhal, Esq. in support of Verified Petition) The subpoena also demanded production of “any and all records referring or relating to [an individual] in the possession of AME or yourself including but not limited to communications (including emails), responses, submissions, invoices, bills, and payments made to or received from [an individual] during the period June 1, 2007 through the date hereof.”

9. In response to the subpoena, affirmant informed the Commission’s attorney, Steve Leventhal, Esq., by two letters dated April 5 and 6, 2010, that Respondent would assert the labor union leader privilege at any hearing or deposition, and, therefore, offered to have Respondent appear on the scheduled date to provide information on an informal basis, and without waiver of any objections to producing documents or testimony to the Commission.

10. Thereafter, Commission counsel communicated to affirmant that Respondent’s attendance was sought for a hearing of the Commission scheduled for July 28, 2010. By communication dated July 21, 2010, Commission counsel was informed that Ms. Felice

would not appear and that documents would not be produced on July 28, 2010 on the grounds of, *inter alia*, privilege. This application follows.

Context of the Subpoena and this Proceeding.

11. There are two circumstances relating to this proceeding that the Court should be aware of in evaluating the merits of this petition and Respondent's grounds to quash: (a) the ongoing labor relations proceedings between AME and the County in bargaining for a renewal collective bargaining agreement, and (b) the recently disclosed investigation of the Ethics Commission undertaken at the request of the County Legislature due to allegations the Ethics Commission has acted or is acting as an instrument furthering political interests of the County Executive. Both of these circumstances will be discussed below.

AME's Collective Bargaining with the County
and Retention of the Inquiry Target in Relation Thereto

12. An understanding of facts relating to the labor relations circumstances are critical to the application of established law protecting disclosure of information and material critical to a labor union leader's fulfillment of her fiduciary duties to advance the interests of the union's members. These important rights and privileges are at the heart of this matter, and, thus, require the conclusion that compelled testimony and production will violate this privilege and the important policies that underlie it.

13. As indicated above, Respondent is President of AME, which is now, and was at the time the subpoena was served, actively involved in negotiations with Suffolk County ("County") to renew the collective bargaining agreement ("CBA") covering the approximately 7,000 Suffolk County workers represented by AME. The current CBA between AME and the County expired on December 31, 2008, but remains in effect pursuant

to the *Triborough* Law (codified at New York Civil Service Law § 209-a(1)(e)). AME has been actively preparing to negotiate the terms of a new CBA since December 31, 2008. Indeed, it has been well known that circumstances were such that the negotiations for a renewal CBA were likely to be especially contentious in that County Executive Steve Levy and his representatives had signaled that they would use the economic crisis of late 2008 as grounds to seek major concessions from County workers. (See March 6, 2009 Press Release from County Executive Levy's Office, and April 21, 2009 Long Island Business News Article, copies of which are annexed hereto as Exhibit "A") Also part of the landscape, in terms of collective bargaining negotiations, was the well-known fact that County Executive Levy's political ambitions were based, in part, on his "fiscally conservative" agenda, with the County's unionized employees cast as reasons for the County's financial woes. Indeed, press reports following Mr. Levy's announcement of his candidacy for governor as a republican were filled with references to his "taking the unions on". (See, e.g., March 9, 2010 New York Post Article, and April 4, 2010 TheChief-Leader.com Article, copies of which are annexed hereto as Exhibit "B")

14. In connection with its preparations for negotiations with the County, in or about October, 2008, AME engaged the inquiry target for the purpose of reviewing, analyzing, and evaluating the County's 2009 recommended operating budget, and related local, state, and federal laws and ordinances, and to develop strategies in relation to the recommended 2009 budget for AME's use in the preparation of bargaining strategies and responses to anticipated County bargaining positions. The ability to understand the budgeting process – including where and how money is committed to various line items and

where savings can be found – is critical information for AME to be able to bargain effectively with the County Executive whose office propounds the budget.

15. Over the course of the inquiry target's engagement by AME, he analyzed County budgets, County Executive positions, and public statements, providing critical information for AME's use in formulating bargaining positions and responding to positions and proposals made by the County and/or County legislature, all of which was to the benefit of AME in fulfilling its representational duties to its members. The strategic advice and assistance provided by this individual was especially important in light of the global recession and its effects on the County, which the County and County Executive stated would have a significant impact on negotiations for a renewal contract and on which he based his political reputation.

The Investigation of the Ethics Commission

16. There is also concern that a collateral purpose is at work here, forming part of the reason for this inquiry and Respondent being called as a witness. As has been reported in the media, the Ethics Commission is currently under investigation by the County Legislature, which has created a bi-partisan committee, led by Joseph Conway, Esq., for the exclusive purpose of determining whether the Ethics Commission is abusing its powers to subpoena and investigate individuals in order to cause harm to the political adversaries of County Executive Levy and otherwise advance Levy's agendas. (See August 26, 2010 LongIslandPress.com Article, a copy of which is annexed hereto as Exhibit "C")

17. The potential for such abuse here is multi-faceted. First, AME and the County are bargaining adversaries, and the County would gain a bargaining advantage if it has access, or even the appearance of access, to AME's strategies, positions, and analyses.

Second, Mr. Levy's political ambitions are advanced by being seen as tough on County workers, and especially Respondent and AME, whose members have been in his sights for many years. Third, it is reported in the press that there is personal animosity between the inquiry target and Mr. Levy. It has been recently reported that the inquiry target left Mr. Levy's administration in December 2007 as a result of bad blood between Mr. Levy and the inquiry target with regard to, *inter alia*, ethics advice the inquiry target offered concerning work Mr. Levy's wife was engaged in with County vendors. (See July 7, 2010 Newsday Article, a copy of which is annexed hereto as Exhibit "D-1" and has been redacted to omit the name of the inquiry target). Previous ethics charges filed by Mr. Levy against the inquiry target regarding severance pay were overturned, and the inquiry target successfully sued the County in relation to this matter, recovering \$40,222.00 of said severance pay. (*Id.*, see also, June 10, 2010 Newsday Article, a copy of which is annexed hereto as Exhibit "D-2" and has been redacted to omit the name of the inquiry target) For all of these reasons, there is a potential for abuse of this process, which Petitioner has not addressed or provided the Court with adequate information about for the Court to be able to independently evaluate the Commission's bona fides in this inquiry.² This is especially a concern, in that, as explained in Point I directly below, it is submitted Petitioner has failed to identify the legal justification for the Commission's investigation into the inquiry target in the first instance.

² This is an example of how the Court is unable to evaluate the merits of the claims and defenses given Petitioner's gamesmanship in failing to disclose the identity of the inquiry target. If the Ethics Commission is aiding Mr. Levy by its investigation of the inquiry target, it would certainly advance that goal by protecting the identity of the target thereby preventing the Court from "connecting the dots" between the Commission's target and Mr. Levy's interests.

ARGUMENT

Point I

Sections A30-4 and A30-5 do not Apply to the Inquiry Target

18. Petitioner states it is presently investigating possible violations of sections A30-4 and A30-5 of the Suffolk County Code of Ethics. (Affirmation of Steven G. Leventhal, ¶ 7) As demonstrated below, neither section provides the authority asserted by Petitioner, therefore, the subpoena is without authority, improper, and must be quashed.

19. As to Section A30-4, it is difficult to understand on what basis Petitioner asserts this section as a basis to investigate the inquiry target in that it relates to disclosure of confidential information by **current** employees or officers of the County:

No officer or employee of the County of Suffolk, whether paid or unpaid, shall disclose confidential information, acquired by him in the course of his official duties, concerning the property, government or affairs of the county or any other confidential information of official character except when required by law, nor shall he use such information to further the financial or other private interests of himself or others.

Suffolk County Administrative Code, Article XXX § A30-4.

Accordingly, by its express terms, this section only applies to current officers or employees of Suffolk County, and, thus, does not apply to the inquiry target, who was engaged to provide services to AME only after he left his position with the County.

20. Section A30-5 also likewise does not apply to the individual being investigated, even though, at least, in part, it relates to former employees. Subparts B, C, and D apply only to current or former **elected** officers and, thus, do not apply to the individual being investigated, who was not an elected officer of Suffolk County. (Affirmation of Steven G. Leventhal, ¶¶ 6 and 8) That leaves only subpart A, which states:

No person who has served as an officer or employee of the County of Suffolk, ... shall, with **respect to any case, proceeding, application or matter which was pending before a board, agency or department** while he was serving as a member, officer, employee or counsel to such board, agency or department, within a period of two years after the termination of such service or employment, appear before any board or agency of the County of Suffolk, act as counsel, attorney or agent, nor receive any compensation or remuneration nor aid in any manner in presenting a claim, request or application in respect to such case, proceeding, application or matter.

Suffolk County Administrative Code, Article XXX § A30-5 (emphasis added).

21. Petitioner does not allege any basis to remotely suggest there is a violation of this section. Petitioner does not identify or allege the inquiry target was involved in any case, proceeding, application or matter which was pending before a board, agency or department in the course of his employment with the County. Nor is there any allegation by the Commission that said individual, in his capacity as an employee or consultant of AME, is involved in the **same case, proceeding, application or matter**. In the absence of any information to this effect, Petitioner has not made a sufficient showing as to its legal authority to conduct the investigation of the inquiry target, allegedly in aid of which it issued the subpoena as to Respondent and maintains this proceeding. Notwithstanding the confidential nature of the Commission's work, without more information, there is simply no allegation that this individual violated section A30-5(A). Without such an allegation, the subpoena to Respondent is an abuse of the Commission's limited subpoena power and it must be quashed.

Point II

Petitioner Has Failed to Demonstrate the Subpoena is an Appropriate Exercise of the Commission's Discretion

22. Pursuant to CPLR 2304, the Court has the power to quash, fix conditions, or modify a non-judicial subpoena. Respondent is entitled to oppose the instant application by any means available in an affirmative motion to quash duly preceded by a request to withdraw the disputed subpoena. Friedman v. Hi-Li Manor Home For Adults, 42 N.Y.2d 408, 412-13, 397 N.Y.S.2d 967, 969 (1977). Moreover, because Respondent is opposing a motion to compel compliance pursuant to CPLR 2308(b), such a request to withdraw is not required. See Temporary State Commission on Living Costs and Economy v. Bergman, 80 Misc.2d 448, 363 N.Y.S.2d 977 (Sup Ct, New York County 1975)(holding that lack of previous request to withdraw does not preclude individual named in subpoena from opposing a motion to compel). Accordingly, Respondent has not waived her right to oppose the instant Petition and can set forth any arguments that would have been available in an affirmative CPLR 2304 motion to quash, even if Respondent's repeated protests to the Commission are not construed as a prior request to withdraw the subpoena.

23. Contrary to Petitioner's implicit claim in paragraph 3 of the Verified Petition that it has unabridged subpoena power, New York courts have consistently constrained the power of state and local agencies to require the attendance of and production of documents by non-party individuals, such that any non-judicial subpoena that is an unreasonable exercise of the agency's discretion will not be enforced. Sussman v. New York State Organized Crime Task Force, 39 N.Y.2d 227, 383 N.Y.S.2d 276 (1976); Carlisle v. Bennett,

268 N.Y. 212, 197 N.E. 220 (1935); People v. Thain, 24 Misc.3d 377, 874 N.Y.S.2d 896 (Sup Ct, New York County 2009).

24. The aforementioned principle has been developed since early Court of Appeals decisions like Carlisle to further limit the power of state agencies to issue non-judicial subpoenas. Matter of Eastern Industrial Supply Corp. v. Waterfront Commission of New York Harbor, 96 A.D.2d 469, 464 N.Y.S.2d 783 (1st Dep't 1983). As the First Department aptly stated:

[i]t is well established that this subpoena authority must be utilized within circumscribed limits of discretion so that its exercise is reasonably related to the subject matter under investigation and the public purpose sought to be achieved. Even where a governmental agency has jurisdiction to investigate, such investigatory powers are not unbridled. There must be authority, relevancy, and some basis for inquisitorial action. Where the exercise of subpoena power has been overly broad, such as to demand records dealing with matters other than the particular subject matter under investigation, courts have intervened to quash or limit the scope of such subpoenas.

Id. at 470, 464 N.Y.S.2d 784 (internal citations omitted).

25. In this case, the Commission has utterly failed to set forth any factual basis for the subpoena to Respondent. The failure to set forth facts establishing the subject matter of an agency investigation and the reasons why the documents and/or testimony requested in connection with the non-judicial subpoena are material, necessary, and reasonably related to the stated investigation requires the dismissal of any subsequent action to compel compliance with the subpoena's mandate. McGrath v. State Board for Professional Medical Conduct, 88 A.D.2d 906, 450 N.Y.S.2d 582 (2d Dep't 1982), aff'd sub nom, Levin v. Murawski, 59 N.Y.2d 35, 462 N.Y.S.2d 836 (1983). "[A] bare statement, without any further description or information, is insufficient to sustain the subpoena. Id.

26. Petitioner's showing in this case is wholly deficient. It is not enough to incant the words that the information sought by way of the subpoena in question is "material and necessary" to the Commission's investigation without explaining how this is so. As the First Department stated in Matter of Eastern Industrial Supply Corp., *supra*, 96 A.D.2d at 470, 464 N.Y.S.2d 784, "There must be authority, relevancy, and some basis for inquisitorial action." At no point in the subpoena, or its submission to this Court, has the Commission set forth an actual basis for demanding the documents and testimony requested in the subpoena. Moreover, the Commission has failed to reasonably explain the subject matter of its investigation. Petitioner cannot have it both ways. It cannot stand behind the confidential nature of its proceedings and refuse to provide information supporting the necessity of the requested information, and yet demand Respondent to disclose its own confidential and proprietary information. If nothing more, the subpoena on Respondent is premature as the requested information may be unnecessary in that Petitioner may be adequately and sufficiently able to investigate the inquiry target's alleged Ethics Code violations through the target himself or other third parties without Respondent having to divulge confidential and proprietary information.

27. The Commission's attempt to compel compliance with a subpoena without actually demonstrating that its investigation has merit, or that the demanded information is reasonably related to and necessary to its investigation, is the exact type of abuse of subpoena power that the Court of Appeals sought to prohibit by refusing to give unlimited subpoena power to certain agencies in early cases like Carlisle. In accordance with the teachings of the above-referenced precedent, the Petition to compel compliance must be dismissed.

Point III

The Subpoena to Respondent Violates the Labor Union Leader Privilege

28. As shown above, the subpoena in issue arises in the context of immediate and ongoing labor relations matters. In order for AME to fulfill its representational duties properly, it must protect against the possibility that its collective bargaining counterpart will discover its strategies, proposals, alliances, and positions unless and until AME decides to so disclose.

29. Upon information and belief, the Ethics Commission knows: (a) that AME and the County are involved in collective bargaining for a new contract, and (b) the inquiry target provides strategic advice on labor relations matters to AME in connection with its relations with the County. To be sure, the subpoena explicitly provides Felice's testimony is sought regarding the engagement of the inquiry target in various capacities, including "strategist" and "consultant".³

30. AME has a duty to protect against disclosure of information detrimental to the interests of its membership under circumstances presented here. Accordingly, AME asserted a labor union leader privilege in response to the Commission's inquiries into the aforementioned subject matter, and thereby requested that the Commission withdraw or modify the subpoena accordingly. (See Letters from Respondent to the Commission, dated April 5 and 6, 2010, copies of which are annexed hereto as Exhibit "E") Petitioner's subpoena should be quashed and/or modified to the extent that it requires disclosure of documents from which AME's negotiating strategies, plans, and proposals may be disclosed.

³ The timing of the inquiry is interesting too, given that inquiry target has been employed by AME since December, 2008

31. The labor union leader privilege applies with respect to disclosure of the specific matters involved in AME's engagement of the inquiry target. It is well settled that a subpoena should be quashed pursuant to CPLR 2304 where the testimony or documents requested fall under a recognized evidentiary privilege. See People v. Heisler, 84 A.D.2d 848, 444 N.Y.S.2d 170 (2d Dep't 1981)(quashing subpoena duces tecum to the extent that it sought privileged documents relating to Richmond County's grand jury structure, demographics and other statistics).

32. The labor union leader privilege extends to the disclosure of documents relating to AME's negotiating strategy. See, Seelig v. Shepard, 152 Misc.2d 699, 578 N.Y.S.2d 965 (Sup Ct, New York County 1991). In Seelig v. Shepard, the court recognized the privilege as shielding disclosure of "internal Union communications on matters concerning labor relations". Id. at 968. The court reasoned as follows:

There is, however, plainly a need in the benefit of society as a whole, for unions to be free to function without harassment and interference from government. Accordingly, there arises, in the context of rules regulating relations between management and labor, a species of privilege for labor union leaders. If unions are to function, leaders must be free to communicate with their members about the problems and complaints of union members without undue interference. Members must be able to have confidence that what they tell their representatives on subjects cannot be pried out of the representatives by an overzealous governmental agency. Union members must know and be secure in feeling that those whom they elect from among their ranks will be their spokespersons and representatives, not the unwilling agents of the employer. The union leadership councils must be free to confer among themselves, exchange views, make plans and arrive at negotiating strategies without intrusion from the organs of official power.

Seelig v. Shepard, 152 Misc.2d at 701-02, 578 N.Y.S.2d at 967.

33. The documents at issue in response to the instant subpoena go to the heart of AME's duties to represent its members in negotiations and will chill and otherwise adversely

affect AME's leadership in their abilities to "confer among themselves, exchange views, make plans and arrive at negotiating strategies without intrusion from the organs of official power."

34. The fact that the communications in issue were between AME and the inquiry target does not compel a different result. The identical policy and reasoning applies to the case at bar. In order for Union leaders to fulfill their fiduciary duties to represent members they must be able to communicate with strategists free from governmental interference and disclosure.

35. Petitioner's claim that this privilege cannot be asserted against the Commission is an overly narrow reading of the applicable case law. Citing to Seelig v. Shepard, Petitioner improperly characterizes the labor union leader privilege as constrained to communications solely between a union official and a union member. In reality, however, the Seelig decision found that the privilege did not apply to communications between a union officer and the employer's high-level management personnel, holding that "unprotected are any communications by [a union leader] to those outside his Union." 152 Misc.2d at 702-03, 578 N.Y.S.2d at 968. Accordingly, because the inquiry target was engaged by AME, he became enclosed within the purview of the labor union leader privilege and, therefore, all confidential communications between he and Respondent are protected from compelled disclosure to the Commission.

36. Petitioner also argues this subpoena is not issued by the employer and thus the policy underlying the privilege does not apply. This claim is disingenuous. Given that the Commission was established by the County, and is administered by appointees of the County Legislature and Executive, as well as the troubling allegations of impropriety regarding the

Commission's involvement with the County Executive's office, it offends common sense and understanding to deny the Commission is a stand-in for the County, i.e. the employer.

37. As the documents responsive to the subpoena fall within the aforementioned privilege, the subpoena must be quashed or modified accordingly. Moreover, compliance with the March 4, 2010 subpoena will not only violate the long recognized privilege described above, but it will also cause irreparable harm to AME and its leadership in, *inter alia*, negotiating with the County over a renewed collective bargaining agreement.

38. The Ethics Commission subpoena, even if not interposed for an improper purpose in itself, will have the effect (or at least poses the unreasonable risk) of causing AME to disclose its negotiating strategies, plans, and positions, all of which could be learned or inferred from testimony and documents relating to the services performed by the individual. Upon information and belief, there are grounds for concern that disclosure of documents and testimony to the Ethics Commission relating to AME's specific negotiating plans and strategies in the instant proceeding will become known to the County and/or County Executive's office. Such disclosure and information will prejudice AME in its fulfillment of its representational duties to its members, including, but not limited to, negotiations over a renewal contract. Upon information and belief, in this regard it is noted that one member of the Commission is appointed by, and serves at the pleasure of, the County Executive. See Suffolk County Charter, Article XXX, Section 2(A). Moreover, the County Executive appoints the Chairman of the Commission among the selected members. Id. at Section 2(C).

39. The law surrounding the labor union leader privilege is not as constrained as Petitioner suggests. Moreover, Petitioner has misapplied the facts of the instant case under its

narrow restatement of legal precedent. In following the generally recognized policy that “unions [must] be free to function without harassment and interference from government,” Seelig v. Shepard, 152 Misc.2d at 701, 578 N.Y.S.2d at 967, the asserted privilege must be upheld and the Commission’s subpoena quashed accordingly.

Point IV

Petitioner Has Failed to Prove that the Subpoena was Properly Authorized

40. Pursuant to its mandate to enforce the Suffolk County Code of Ethics, Petitioner may subpoena witness, compel their attendance and require the production of books and records. Suffolk County Charter, Article XXX, § C30-6(B) “Such subpoenas, however, may only be issued if authorized by a unanimous vote of three members of the Suffolk County Ethics Commission duly recorded for each separate subpoena or subpoena *duces tecum*.” *Id.*

41. Petitioner has failed to prove the subpoena on Respondent was authorized.

42. Absent such proof, Petitioner’s application must be denied.

43. Notwithstanding the outcome of the present applications, affirmant submits that Respondent Felice has a previously scheduled appearance before the New York State Division of Human Rights at 3 p.m. on September 22, 2010, the date upon which the Commission demands she appear before them at 4 p.m. for the hearing. A requested adjournment of the appearance before the State Division of Human Rights has been denied.

44. There has been no prior request for the relief sought in the cross-motion, to wit, for the Court to quash the subpoena in issue, to any Court or Judge.

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 13, 2010


GARY SILVERMAN

EXHIBIT A

Suffolk Executive Levy Chides Bargaining Units for Requiring 'All or Nothing' Discussions

Christopher Kent
Chief Deputy

Steve Levy
County Executive

Ed Dumas
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Connie Corso
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Ken Crannell
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[Back to County Executive](#)

Suffolk Executive Levy Chides Bargaining Units for Requiring 'All or Nothing' Discussions

National Recession and Worsening Budget Crisis Leaves "No Time for No Shows"

Second March Sales Tax Check Down by Nearly 25 Percent

Hauppauge, NY – Suffolk County Executive Steve Levy said the unwillingness of seven of the county's collective bargaining units to meet with him this afternoon on addressing Suffolk's serious budget crisis will likely lead to the issuing of pink slips to hundreds of county employees in the near future.

The county executive began reaching out to the county's 11 bargaining units last week to schedule meetings of small groups today and Friday, to present to them the severity of the budget shortfall and cash flow crisis, and to overview cost-saving alternatives that would avert the need for layoffs beginning April 1.

Representatives from the several unions had earlier agreed to meet with the county executive today, but backed out after the county's 11 unions collectively decided to seek "all or none" negotiations.

Levy said he believes a series of several small group meetings -- given the level of detail and the potential for follow-up questions on issues that impact each organization separately -- would be "more conducive than one larger group."

"This was also an attempt by the unions to make this an 'all-or-nothing' approach, which is untenable in negotiating and interacting with eleven separate organizations," Levy said. The county executive noted that in negotiations on health care, which are conducted in a collective fashion as established by policy before Levy took office, becomes "unwieldy where one unit can hold hostage an agreement for all other units.

"Also," he added, "this may be delaying tactic by one organization whose leadership is involved in re-elections. Such an all or nothing concept would doom from the start our ability to get a reasonable, equitable and the least painful settlement to the fiscal woes facing the government."

"The loss of jobs that is certain to come, falls squarely in the laps of the union leaders who took this unrealistic all or nothing approach to bargaining. A lag payroll is a far more humane way to solve our financial problems than layoffs," said Levy. The county executive added, "Our door remains open for constructive dialogue with the unions.

"The clock is ticking, and week after week the financial news gets worse," Levy cautioned. "There is no time for posturing; there is no time for avoiding difficult decisions. Across this nation, workers in both the private and public sectors are being asked to make small, shared sacrifices as a way to avert or minimize the outright loss of jobs."

According to county budget officials, the national recession, on its present course, has resulted in a projected shortfall of sales tax and property tax payments for more than \$110 million over 2008 and 2009.

Earlier this week, Levy noted that the sales tax check for the first payment in March was down by more than nine percent over the same period last year -- and announced today that the second March payment will be a staggering 25 percent less. Year-to-date figures show a decline of more than 9 percent, or \$12 million.

Last week, Levy presented to the legislature a resolution that seeks the authority to impose layoffs beginning April 1, unless the county can gain contractual concessions to help lower costs. Those concessions, Levy said, could include a lag payroll, elimination or suspension of mid-year step increases and longevity payments, elimination or suspension of meal and clothing allowances, holiday pay deferrals, and elimination of certain non-medical benefits, such as legal and tax preparation reimbursements.

Suffolk County Executive Steve Levy shrinks county layoff list, slightly

By Samuels, Michael H

Publication:

Date:

Print

Share:

Suffolk County Executive Steve Levy's list of county positions he is proposing to lay off unless labor unions agree to \$30 million in concessions just got a little smaller.

The 347 layoffs, which will be presented to the county Legislature on April 28, no longer include four health sanitation positions in food inspection, one hydro-geologist and 16 correction officer positions. Levy and the Correction Officers Association reached an agreement late last week on their share of concessions.

Levy spared the food inspectors after the public decried the county for considering cutting a position tied to public safety.

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Facts That Union Leaders Don't Want You To Know.

www.UnionFacts.com

Levy is asking the unions to agree to a lag payroll to help save the county about \$26 million. Employees will be paid back the money at the rate they are earning when they leave county service.

"Employee costs are one of the largest percentages of our budget, and we cannot attain structural budget reform without addressing this area," Levy said in a statement.

The lag payroll option is one of many Levy is discussing in order to make up a projected \$117 million budget deficit for 2009.

He is also proposing transferring \$30 million from the

Tax Stabilization Fund.

Credit: Michael H. Samuels

EXHIBIT B

A pro-taxpayer NY pol

Last Updated: 9:14 AM, March 9, 2010
Posted: 12:22 AM, March 9, 2010

Here's something you don't see every day: A New York elected official taking on a public-employee union that's bleeding his constituents dry.

So, all the better that the official, Suffolk County Executive Steve Levy, looks to be thinking seriously about a run for statewide office.

As Levy details on the opposite page, Suffolk cops are some of the highest-paid police officers in the world — each costing taxpayers an *average* of \$180,000 a year when you factor in health benefits, overtime and pension costs.

That's scandalously unsustainable, of course — and a big reason for the county's sky-high property taxes.

Levy pins the blame squarely on state mandates that make it impossible for the county to drive a hard bargain with the police union — though he seems to be doing what he can: He's authorized the hiring of only a bare-bones rookie class.

Good for Levy — and good for New York, which at least has *one* pol with some backbone.

What's intriguing for non-Long Islanders is the possibility that he might try to take that act to Albany.

The state, after all, faces a \$9 billion deficit next year — thanks mostly to the same union greed that Levy's battling in Suffolk, and the Legislature's shameful pro-union pandering.

Though a Democrat, Levy is reportedly meeting with state Republican leaders to explore a run for governor on the GOP line.

This is far from an endorsement, but it's clear that Levy's entrance would greatly improve the field.

The sole declared GOP candidate, ex-Rep. Rick Lazio, has thus far underwhelmed. Meanwhile, the prohibitive Democratic favorite, Attorney General Andrew Cuomo, raised close to \$1 million from unions last year. Don't count on Cuomo to bite the hand that so lavishly feeds him.

At the very least, Levy's stand in Suffolk should inspire those fighting union hegemony across the state.

As to the future . . . here's hoping New Yorkers give him a closer look.

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Call GOP Hopeful 'Opportunist'

By MARK TOOR



STEVE LEVY: Labor's favorite SOB.

Suffolk County Executive Steve Levy's announcement March 19 that he was seeking the Republican nomination for Governor raised hackles among public-employee unions that have been a prime focus of his efforts to hold down taxes.

In announcing his candidacy, Mr. Levy said, "I am the only candidate who has balanced a budget, who has cut spending and taxes, who has said 'no' to the special interests and who has extracted concessions from public employee unions."

Chides Governor for 'Timidity'

He threatened layoffs to win \$36 million in givebacks from the unions last year, according to his campaign Web site, LevyforNY.com. It added that the state did not win similar concessions "because of its timidity in threatening layoffs."

A former State Assemblyman and Suffolk County Legislator, Mr. Levy won his second term as County Executive in 2007 with 96 percent of the vote. He was cross-endorsed by the Democratic, Republican, Conservative and Independence Parties.

Mr. Levy is popular with Suffolk County taxpayers because he is frugal. He has taken more than \$70,000 less in salary than he's entitled to over the past six years. New hires among his top aides are often paid less than their predecessors. He has trimmed his own staff and sent three police officers assigned as his drivers back to the county Police Department.

He has not raised the general county tax for the six years he's been in office. He has trimmed public-sector jobs and taken tough negotiating positions with unions.

The Civil Service Employees Association, one of the state's largest publicemployee unions with 300,000 members, does not negotiate in Suffolk. Still, the union, which has dealt with Mr. Levy through the New York Association of Counties, looks at him with a jaundiced eye, spokesman Stephen Madarasz said in an interview.



RICK LAZIO: Thunder from his right.

The latest gubernatorial hopeful is one those politicians who "try to make careers by scapegoating and denigrating public employees," Mr. Madarasz said. "We would take a lot of exception to what he's been saying."

Mr. Levy tries to blame the county's and state's fiscal problems on the unions, but elected officials should be doing a better job in managing their money, Mr. Madarasz said. "The idea that this is a one-way street is just wrong." He noted that his members live in the same communities and pay the same taxes as everyone else.

'A Self-Promoting Opportunist'

Jeff Frayler, president of the Suffolk County Police Benevolent Association, called Mr. Levy "a self-promoting opportunist."

He criticized the County Executive's negotiating tactics, saying, "He comes in and he grandstands—you've got to give me 0, 0, 0 [percentage raises] while everyone else in the world is getting 3s and 4s."

Beyond contract talks, Mr. Frayler charged, Mr. Levy often misleads the public on police matters. For example, the County Executive said in a press conference that he was changing the way the department fought gangs. To replace the five to seven gang officers in each of the seven precincts, he created a centralized gang unit of 20 officers, telling the public he was intensifying the war on gangs while actually cutting personnel more than 40 percent, Mr. Frayler said.

Patrol Change Costly

In a highly-publicized move, Mr. Levy removed Suffolk Police Officers from patrolling the Long Island Expressway and Sunrise Highway in 2008 and replaced them with lowerpaid Deputy Sheriffs. Mr. Frayler pointed to a story in Newsday that said the number of tickets issued had dropped 63 percent in the first six months after the deputies took over. He also said overtime and equipment costs for the Sheriff's Department rose. The police union is appealing to the state Public Employment Relations Board to regain highway patrol duties.

The roughly 240 Police Officers that Mr. Levy has authorized hiring have not been enough to keep up with retirements, Mr. Frayler said. The budgeted strength of about 2,000 officers is down by about 350, he said, and if the force loses another 50 "it becomes unmanageable."

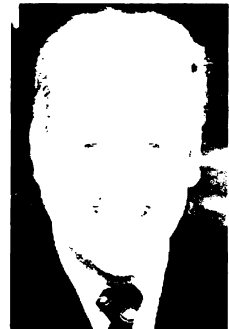
The Suffolk County Legislature recently voted to hire 200 new Police Officers, Mr. Frayler said, but Mr. Levy has said he might actually hire just 70.

\$7,200-Per-Member Deferral

The police union has loaned the county about \$12 million by deferring retroactive pay for the two years between the expired contract and a new one until retirement. That's about \$7,200 for each officer, Mr. Frayler said.

"We're always looking to do our share, but we're not looking to be bullied," he said.

He jokingly suggested that Mr. Levy run for Congress rather than Governor. "He should be up there in Washington with Nancy Pelosi," Mr. Frayler said.



JEFF FRAYLER: Governor hopeful 'grandstands.'

The Suffolk County Association of Municipal Employees, representing 8,500 employees, did not respond to repeated phone calls, but its Web site indicates tension between the union and the County Executive. A September press release criticized Mr. Levy for his practice of "budget by press release."

'Dump Steve Levy'

A release sent out a year ago said he announced a demand for \$30 million in union concessions to avoid layoffs without first discussing it with union leaders. Mr. Levy negotiated a two-week lag-payroll deal with the union to avoid the layoffs.

The union said the general fund tax that Mr. Levy has not raised for six years represents 1 percent of the average property tax bill, but taxes that support the police have "skyrocketed."

Some of the County Executive's labor opponents are bare-knuckle brawlers. Facebook includes a Dump Steve Levy group that had 700 members as of March 24 and called him "a union-hating dictator of a county executive."

Mr. Levy did not respond to e-mails sent to his office and campaign Web sites.

Lazio's Campaign Lags

His candidacy shook up a race in which Attorney General Andrew Cuomo had been expected to win handily, although he still hasn't announced he will seek the Democratic nomination. A poll by the Siena Research Institute on March 23 found him nearly 40 points ahead of Rick Lazio, who was expected to win the Republican nomination before Mr. Levy joined the race.

Mr. Lazio, who is also from Long Island, is a former U.S. Congressman who ran unsuccessfully against Hillary Clinton for the U.S. Senate in 2000. He is now a managing director of J.P. Morgan Chase in New York City. Mr. Lazio's fund-raising is lagging and media observers have said his campaign has been lackluster.

A majority of Republican county chairmen had favored Mr. Lazio for the nomination, but a number have dropped away since Mr. Levy announced.

Wants Pay, Benefits Frozen

These proposals that could affect state and municipal workers are outlined on Mr. Levy's campaign Web site:

- Declare a fiscal emergency, which "would permit the state government to control wage and benefit growth." He suggested creating a commission that would propose cuts and efficiencies in state government that would become law unless the Legislature rejects the entire package.
- Cap state spending as well as local property taxes that fund the schools.
- Repeal the Triborough Amendment to the Taylor Law, which stops agencies from altering any part of an expired labor contract before a new settlement is reached. That would allow public employers to freeze salaries and benefits during negotiations rather than having step and cost-of-living raises from the expired contract go into effect.
- Reform public pensions to align benefits for new public employees with those in the private sector.
- End mandatory arbitration, which his campaign says generally favors labor.
- End disability pensions for police officers who are hurt accidentally rather than while taking police action.

EXHIBIT C

Suffolk's Ethics Probe Enigma Consumes All

Levy, legislature, DA and Newsday all caught in ethics feud

By Timothy Bolger on August 26th, 2010

First a panel accused Rep. Charles Rangel (D-Harlem) of ethics violation charges—allegations the 80-year-old intends to fight while running for re-election. Then the Public Integrity Commission charged New York State Gov. David Paterson violated ethics laws by soliciting five World Series tickets last year. Not to be left out, Suffolk County lawmakers have been accusing one another of ethical violations left and right.



Suffolk County Executive Steve Levy at a recent news conference. Levy has taken issue with a probe into the Ethics Commission, which he says is a partisan witch hunt.

The Suffolk County Legislature created a special committee to investigate the impartiality of the independent Ethics Commission—a move that has riled County Executive Steve Levy, who argues the probe is a partisan witch-hunt out to find dirt on him. The failed gubernatorial candidate believes his defecting to the Republican Party is the reason the Democratic-majority legislature opted to conduct the review. Meanwhile, the week-old inquiry may have sparked a criminal investigation and media coverage of the story could wind up in court as well.

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roared with laughter.

But the laughter turned to gasps when Majority Leader Jon Cooper (D-Lloyd Harbor) suggested that Levy had threatened him and other elected officials with dirt the county exec has on them if the lawmakers voted to retain an attorney to conduct the investigation into the commission.

"He has information on virtually all of us that he has threatened to use if we move forward with this," Cooper told the legislature prior to the vote. "He basically said if we want war, we've got war," to which Cooper added: "Bring it on."

"I've done nothing wrong," Levy told the *Press* in a recent interview. "We'll withstand the scrutiny if there's an unbiased review."

For spectators at the legislature's Aug. 17 general meeting in Riverhead, the heated debate was lightened with a little political theater, as Presiding Officer William Lindsay (D-Holbrook) read a quote: "I had some real problems with the idea of [the] setting up of a powerful committee that would not be directly accountable to the public, to oversee elected officials. The question becomes who checks the checker?"

After reading the line, Lindsay revealed the speaker: Steve Levy, while he was a county legislator in 1988, commenting during a public hearing prior to the creation of the Ethics Commission. The audience, packed with opponents of Levy's proposal to sell the John J. Foley Skilled Nursing Facility,

Levy confirmed to the *Press* that he has compiled evidence of about alleged 20 ethical conflicts, but was not going to name names just yet.

Lindsay ratcheted up the rhetoric by announcing at the meeting that he tipped off Suffolk County District Attorney Tom Spota to potentially criminal behavior from those lobbying against the Ethic Commission probe.

"I have received requests to initiate investigations into purported wrongdoing by one or more public officials," Spota said in a statement. "The matters are under review."

Neither Lindsay nor Spota discussed specifics.

And with that, all three branches of government were brought into the mudslinging. But The Fourth Estate was not left sitting on the sidelines, either.

Prior to the vote, Legis. Tom Barraga (R-West Islip) read a three-minute diatribe calling *Newsday* every name in the book—from a second-rate *National Enquirer* to a pet-dropping liner and a purveyor of yellow journalism—while blasting his colleagues for getting the idea for the probe after reading the Melville-based newspaper's recent reports. Lindsay insisted the investigation was not inspired by *Newsday*.

Long Island's lone daily has run a series of stories questioning Levy's use of a New York State (NYS) financial disclosure form over a Suffolk County form. The articles suggest that the Ethics Commission, which reviews the forms, improperly allowed Levy to use the state form with the goal of allowing him to hide assets, suggesting that the commission ethically compromised itself.

Levy said the state form is more revealing than the county form and emphasized that a top NYS ethics expert agrees with the reason he filed the state form. He has issued numerous press releases disputing *Newsday's* coverage—in addition to a memo to Long Island media editors with line-by-line disputes over the reporter's phrasing and choice of sources.

Levy also called for a retraction, which has not been granted. Last week, he said he was contemplating a libel suit against *Newsday*.

"We stand behind the accuracy and fairness of our news coverage," said Paul Fleishman, *Newsday's* vice president of public affairs.

The Ethics Commission, a panel made up three members—two appointed by the legislature and one by Levy—has been trying to defend its honor as well.

"The suggestion that the decision by the Commission was done due to pressure from Mr. Levy's office to 'give him a pass,' is an accusation that explicitly accuses the members of the Commission of acting unethically," the commission's members wrote in a letter to the legislature earlier this month. "Such a scurrilous and unsubstantiated accusation is nothing less than contemptible."

As for the man chosen to wade into the firestorm and report his findings within the next three months, the legislature voted 13-5 to hire Joseph Conway, a Mineola-based criminal defense attorney, former federal prosecutor in the Eastern District of New York and member of the Independence Party.

"With all due respect to *Newsday*, I don't consider anything that's in a newspaper as evidence," Conway said told the 18 legislators. "I look at this as another investigation," he said, adding that he will reach out and speak to ethics experts, among others.

"The only reason they want to perpetuate this with a panel is to keep this alive for political reasons," Levy told the *Press*. "If you want to have an investigation of the financial disclosure process, let's do it, but don't exclude the legislators," he added.

Legislators on the panel reiterated that they are not looking into a specific government branch.

"The goal of the committee is to determine whether or not the commission is complying with county law or if the statute needs to be updated," members of the Ethics Commission Oversight Committee—including include Cooper, Lindsay, Lynne Nowick (R-Smithtown) and John Kennedy (R-Nesconset)—wrote in a letter to Levy while inviting him to come to a meeting, once they are scheduled.

"We will first allow the group to meet with its special counsel," Levy responded in a statement, adding that it "continues to sound like a special committee that has already made up its mind."

Republican committee members tried to assure Levy otherwise.

"The scope of our review is wide-open at this point," Kennedy said in a statement. "We will do a full, thorough and bipartisan review, wherever that review may take us. Our aim is to do everything we can to make sure Suffolk County government is as open and transparent as we can possibly make it."

We'll see if Levy takes a fellow Republican at his word.

EXHIBIT D

Levy's wife's business: A question of disclosure

July 7, 2010 by SANDRA PEDDIE / sandra.peddie@newsday.com



Court reporting firms owned by Suffolk County Executive Steve Levy's wife, Colleen West, have regularly received work from businesses that have been paid millions of dollars in county contracts in recent years.

At least seven businesses - five law firms that have been paid more than \$3 million since 2006 and two hospitals that have been paid more than \$23 million by Suffolk County for services since 2008 - have hired

West's companies Enright Sten-Tel and Enright Court Reporting to provide transcription services during that time.

Records show that one business, Stony Brook University Medical Center's Cody Center, paid one of West's companies \$31,906 for work from October 2008 through May 2010. Stony Brook University Hospital, which receives county funding, helps fund the Cody Center. A university spokeswoman said Enright's relationship with the Cody Center was discontinued last week.

No public records could be found that show what other vendors paid her companies. The businesses declined to discuss their relationships with West's firms. In an interview, West said that she has "up to 10" county vendors as clients. She said some of them predate Levy's election as county executive in 2004.

Suffolk County's financial disclosure form requires approximately 650 county officers and employees to report financial interests, including those of a spouse. The form also requires the county employee to report all sources of income above \$1,000; all contractual arrangements that produce or are expected to produce income; and all honoraria, lecture and miscellaneous fees earned by the county employee and the spouse. Legal and ethics experts who helped draft the 1988 Suffolk ethics law say this requires Levy to report West's work for county vendors - businesses selected by the county for work paid with tax dollars.



The county Ethics Commission since 2006 has permitted Levy to satisfy the county disclosure requirement by filing the New York State financial disclosure form - one that requires far less extensive financial information than the one mandated in county law. In addition, the county form is a sworn statement, while the state form is not. As a member of a state-appointed

Pine Barrens Commission, Levy is required to fill out the state disclosure form. Levy has not disclosed West's work for county vendors in state financial disclosure forms he has filled out since 2006. Walter Ayres, spokesman for the State Commission on Public Integrity, said the state form does not require disclosure of a spouse's clients.

Levy: Business disclosures not required

Levy said nothing in county ethics law or in the county disclosure form requires him to disclose these business relationships. And the county executive has maintained that he is not required to file the county's disclosure form because state law trumps local law. Levy said he filed the county form his first two years in office, 2004 and 2005, but he has declined to provide those reports to Newsday.

Following a June 7 subpoena to the Ethics Commission and the clerk of the legislature by Suffolk District Attorney Thomas Spota for records related to the Ethics Commission and financial disclosure forms, Levy said he would file the county financial disclosure forms from 2006 to the present. And Ethics Commission director Alfred Lama said Monday that Levy has recently filed the 2009 form. Newsday requested this form, along with the earlier county forms, Tuesday and was told to file a written request.

Late Tuesday, Levy filed the county forms for 2006 to 2008, his spokesman, Dan Aug, said. "We've shown that we were willing to go above and beyond, first by complying with the state law and then by filing additional forms even though it was not required to do so," Aug said in a statement. Aug did not respond to questions as to what information is on the forms.

Wednesday, a newly formed Suffolk legislative committee met to discuss investigating the decision by the Ethics Commission - whose members at the time were appointed or recommended by Levy - not to require Levy to file the county's disclosure forms since 2006. Presiding Officer William Lindsay (D-Holbrook) said the committee, which met behind closed doors, interviewed potential candidates for special counsel and discussed seeking subpoena power for the committee.

SBU ends arrangement with Enright

Records show that West signed an addendum to a business services agreement with the Cody Center at the Stony Brook University Medical Center. Asked Friday to comment on Enright's work, university spokeswoman Lauren Sheprow said the arrangement between the Cody Center and Enright Sten-Tel was discontinued last Thursday.

Late Tuesday, Sheprow provided a second statement that read: "The Hospital was not aware that the Cody Center had enlisted this vendor, and by doing so, the Cody Center departed from University purchasing procedures. When authorities at the University learned of it, the arrangement was discontinued. The Hospital has a state approved contract with a different vendor for transcription services."

Sheprow did not provide details as to how West's firm got the work or why it was discontinued.

In a written statement Wednesday, West said her company had nothing to do with any procedures utilized by the Cody Center in picking a transcription company. She said the Cody Center was told it could pick its own company and used Enright on a day-to-day basis.

Two weeks ago, Levy and West said in a joint interview that she works as an independent contractor and does not have written contracts with her clients. She said law firms call her when needed. Levy also said he sought a ruling from the commission in 2005 as to whether West could bid on a Stony Brook University Hospital contract. A ruling from the commission said that if she won a contract, it would not constitute a prohibited "direct or indirect" interest in any contract or professional dealings with the county.

In the interview, Levy said, as a result of that ruling, he believed West's subsequent work for the hospitals - and the law firms as well - did not constitute a conflict.

In addition, Levy and West said she does not work on county business for these firms. West said she has never looked to her husband for help in her businesses. If anything, she said her marriage to Levy has hurt her business more than it has helped. "We're good people, and we try to do everything right," she said.

Late Tuesday, Levy offered two additional opinions in support of his view that state law supersedes county law in this case. In one opinion, Barry Ginsberg, executive director and general counsel of the New York State Commission on Public Integrity, said state law allows a local municipality to accept the state disclosure form in place of the local form. In the other opinion, Mark Davies, executive director of the New York City Conflicts of Interest Board, said state general municipal law was "crystal clear" in allowing a person subject to two filing requirements to file the state disclosure form to satisfy a local law.

Levy recently switched from Democrat to Republican in a failed bid to run for governor as a Republican. He has not announced whether he will continue as a gubernatorial candidate.

Suffolk County Comptroller Joseph Sawicki, who once served as the ranking Republican on the State Assembly ethics committee and whose office reviews county contracts, said: "It appears to me that he's taken pains to hide these agreements and to avoid publicly disclosing what every other county official has to - as they should."

Experts: Disclosures needed

Anton Borovina, who served as first counsel to the county Ethics Commission and who helped draft the law, said, "The Suffolk County ethics law applies to him, and the Suffolk County ethics code requires all employees to file disclosure forms that include information about the spouse, P-E-R-I-O-D."

Robert Gottlieb, a Suffolk lawyer who chaired the committee that drafted the county ethics code, said Levy is required to file the county form and disclose his wife's business connections. "Hiding the sources of income behind the legal nicety that it's an oral agreement and not a written contract just smells bad," Gottlieb said.

According to Enright's website, West started Enright Court Reporting Inc. in 1991, and bought a franchise for transcription services in 1998, which she calls Enright Sten-Tel. The website states that Enright Sten-Tel is ranked among the top three out of 50 Sten-Tel companies nationwide.

Although Levy and his wife declined to list all of her clients who are also county vendors, at least five law firms that have county business have used Enright, records and interviews show. They include Vecchione, Vecchione & Connors LLP of Garden City Park; Lewis, Johs, Avallone, Aviles & Kaufman LLP of Melville; Vincent D. McNamara of East Norwich; Mulholland, Minion & Roe of Williston Park, and Fumuso, Kelly, DeVerna & Snyder LLP of Hauppauge.

Of the five law firms, West named three that were her clients before her husband became county executive in 2004 and that have remained clients. All five serve as outside counsel to Suffolk County and have been paid more than \$3 million by the county since 2006, the year Levy began filling out the state disclosure form, according to county records. At least one of the firms, Lewis, Johs, Avallone, Aviles & Kaufman, did work for the previous administration of Robert Gaffney. Another firm, Mulholland, Minion & Roe, handled cases for previous administrations, according to attorney Brian Davey. The other firms did not respond to calls or e-mails for comment.

Campaign finance records show that the five law firms have contributed \$86,950 to Levy's campaign coffers in that time.

Enright's hospital work

Enright has done work for Stony Brook University Medical Center's CODY Center, and Good Samaritan Hospital Medical Center in West Islip. Since October 2008, the CODY Center has paid Enright Sten-Tel \$31,906, according to records. During the same period, the county paid the hospital \$10.8 million. Good Samaritan has been paid more than \$26 million by the county since 2006. Catholic Health Services, which runs Good Samaritan, declined to reveal how much it has paid Enright.

In 2008, after the Suffolk Police Benevolent Association raised questions about Enright doing county work, County Attorney Christine Malafi, Levy said, wrote a letter to law firms receiving county business stating that Enright was not on any list of court reporters that could be chosen by the county or its outside counsel for stenographic service. The letter did not specifically address her firm's work for these businesses on noncounty related business. Sawicki, whose office monitors county contracts, said he never received a copy of the letter.

In the interview, West said she has had a number of the clients who receive county business for years, going back to before her husband was elected county executive, while he was a county legislator and state assemblyman, and even before some of the firms were selected for county work.

Levy said that his wife's work with county vendors had "no relevance to county business." According to Levy's former chief deputy county executive [REDACTED], Levy asked him in 2005 if his wife could seek work from hospitals with county contracts. "My response was that it would be prohibited, at which point he told me the county attorney disagreed with me," said [REDACTED], who served as legal counsel to the legislature for more than 19 years. "We never discussed it again." Malafi declined to comment.

On Tuesday, Aug, Levy's spokesman, said, "The county executive does not recall any such conversation, and he certainly would not rely on any opinion from Mr. [REDACTED] on this matter."

[REDACTED] left the Levy administration in December 2007 after months of discord. Borovina represented [REDACTED] in his successful overturning of ethics charges filed by Levy against [REDACTED] over severance pay.

Levy said he asked the Ethics Commission whether West could bid on a Stony Brook University Hospital contract, since the hospital receives county funds. The opinion, which says West asked for the ruling, said that if she won the contract, it would not reasonably create a conflict.

That opinion, dated Oct. 24, 2005, states that the ruling is limited: "This opinion is specifically limited to the issue of whether a prohibited conflict of interest in violation of Suffolk County Administrative Code A30-1 would be created if Enright Sten-Tel Transcription Services Inc. entered into a contract for medical transcription services with Stony Brook University Hospital or other hospitals which have contracts with the County of Suffolk to provide medical care."

In the interview, however, Levy said the opinion was "all encompassing" and would also apply to her work for the law firms.

Ethics law addresses conflict issue

County ethics law bars county employees from engaging in any activity, "directly or indirectly," that could pose a conflict of interest or the appearance of a conflict. Specifically, the law reads that no officer or county employee can have an interest in "any contract or business or professional dealings" with the county. Further, the law defines "interest" to include the activities of a spouse or minor children.

Newsday reported that Levy was one of two employees who filled out the state form in place of the county form. In the wake of the subpoena, Levy has consistently maintained that

other municipalities allow the substitution of the state disclosure form for the county form. He has also argued that state law supersedes the county's more stringent filing requirement.

However, legal experts point to an earlier appellate court decision in 2003 on the Suffolk Ethics Commission that found a county can impose more stringent ethics regulations than those required by state law.

Levy's current chief deputy county executive, Ed Dumas, wrote in a June 28 memo he e-mailed to a reporter that the appellate court case did not apply to Levy's situation because state law would trump county law in his case. In a subsequent e-mail, Levy spokesman Aug said they were "adamant" that state law trumped local law in this matter.

George Nolan, counsel to the legislature, issued an opinion June 30 that cited the appellate court decision and said the Ethics Commission is "obligated to follow the county's financial disclosure law and should only accept from officers and employees the county form . . . "

The Ethics panel

What is the Ethics Commission?

In Suffolk County, it is a board that reviews financial disclosure forms, renders advisory opinions on the county's ethics law, and conducts hearings as necessary to implement the law.

How many members?

Three.

Who picks them?

Under Suffolk law, one is selected by the county executive, one by the legislature, and one by the presiding officer. In practice, the legislature has accepted recommendations from the county executive.

Are disclosure forms available for public viewing?

These disclosures must be requested through a Freedom of Information form. The commission then meets and decides whether to release them. If released, the commission redacts certain financial information.

[< back to article](#)

Appeals court: Former Levy aide is owed exit pay

June 10, 2010 by RICK BRAND / rick.brand@newsday.com

Suffolk County Executive Steve Levy has lost his court battle with former top aide [REDACTED] over \$40,222 in withheld exit pay.

And, the county will have to pay [REDACTED] an extra \$4,500 in interest because the war lasted 2 1/2 years.

The Appellate Division in Brooklyn ruled unanimously that [REDACTED] is "entitled to be paid" all \$194,220 in exit pay for unused vacation and sick time, though the county argued [REDACTED] should forfeit 444 hours.

The county claimed he failed to disclose waivers that later benefitted him after he drafted legislation to reform payouts. But [REDACTED]'s lawyer [REDACTED] said [REDACTED] made disclosures on three separate occasions and bill changes were aimed at gaining votes for the reform, not helping [REDACTED], then legislative counsel.

And while the issue of pay was resolved in court, there is still tension between Levy and [REDACTED].

Levy said, "I feel offended that for nearly 20 years, [REDACTED] carried these exemptions in his back pocket and never disclosed them to me."

[REDACTED] said he was pleased to be vindicated. "Being accused of ethical improprieties by the Levy administration is akin to have Eliot Spitzer lecture you on the evils of prostitution," he said.

The appeals court found the county claims were "without merit." And in an earlier court ruling, State Supreme Court Justice Jeffrey Spinner found them to be "a bit tortured" and "unsupported by the facts."

Assistant County Attorney Leonard Kapsalis said there would be no further appeal.

"The court sidestepped the crux of our argument that Mr. [REDACTED] was disqualified from receiving extra cash-outs because he improperly and secretly crafted a bill to exempt himself from cuts that virtually every other [exempt] employee was subject to," Kapsalis said.

EXHIBIT E

BRIAN O'DWYER
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CHRISTOPHER DOWNES*
VICTOR GRECO
CODY K. M'CONNE
GARY P. ROTHMAN*
MARIANNA O'DWYER

STEVEN ARIPOTCH
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ANNE M. PAXTON
MICHAEL CARROLL
CRAIG R. NUSSBAUM**

* ALSO ADMITTED IN NJ
** ALSO ADMITTED IN CT
* ALSO ADMITTED IN PA & NJ
*JD NOT ADMITTED

WRITER'S DIRECT DIAL

April 5, 2010

Via Facsimile (516) 484-2710

Steven G. Leventahl, Esq.
Leventahl and Sliney, LLP
15 Remsen Avenue
Roslyn, New York 11576

FILE COPY

Re: Suffolk County Ethics Commission

Dear Mr. Leventahl:

This firm represents Cheryl A. Felice, President of Suffolk County Association of Municipal Employees, Inc. ("AME"), in which capacity she has been subpoenaed by the Suffolk County Ethics Commission by subpoena dated March 4, 2010.

Upon further review of the matter, including review of documents that may be responsive to the subpoena, it is clear that labor union leader privilege applies with respect to disclosure of specific information (documentary and testimonial) that intrudes upon and has the potential to adversely affect AME's representational duties, specifically including negotiating a renewal collective bargaining agreement with the County. In the instant case, this privilege, which has been recognized by New York courts, applies to specific strategic advice sought by and provided to AME with respect to the analysis, evaluation, and review of Suffolk County operating budgets and other economic conditions as AME prepares for contract negotiations with the County. To function properly, AME must be able to obtain advice and information to meet and respond to the County's usual demands for economic concessions (especially for the present negotiation cycle in view of present economic circumstances) without fear that this strategic information will make its way to the County.

The concern is that discussion of AME's specific negotiating plans and strategies in the Ethics Commission proceeding will be disclosed – through FOIL, or other means, or otherwise filter back to the County and/or County Executive, and it will be used to the prejudice of AME in its negotiations with the County. In this regard it is noted that one member of the Commission is appointed by, and, upon information and belief, serves at the

Steven G. Leventhal, Esq.

April 5, 2010

Page 2

pleasure of, the County Executive. It is further noted that the County Attorney is the attorney for the County Executive and the Ethics Commission and attorneys employed by the County Attorneys' office are assigned to Ethics Commission matters.

In view of these circumstances, the labor union leader privilege operates to protect strategic communications as set forth above. Accordingly, in the absence of an agreement regarding these concerns, the document production will be limited and we reserve the right to object to questions that would violate the privilege.

Thank you.

Very truly yours,

O'DWYER & BERNSTIEN, LLP



GARY SILVERMAN

cc: Cheryl A. Felice,
AME President

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~JD NOT ADMITTED

WRITER'S DIRECT DIAL

April 6, 2010

Via Facsimile (516) 484-2710

Steven G. Leventahl, Esq.
Leventahl and Sliney, LLP
15 Remsen Avenue
Roslyn, New York 11576

FILE COPY

Re: Suffolk County Ethics Commission
Subpoena issued to Cheryl A. Felice

Dear Mr. Leventahl:

Following our telephone conversation of April 5, 2010 and after review of your letter of same date, I want to make clear that Ms. Felice's appearance scheduled for 4 pm on this date is without waiver of any objection to providing testimony and producing documents and she hereby reserves all of her rights with respect thereto.

Notwithstanding the foregoing, Ms. Felice and I intend to appear at the appointed time and place. Assuming the foregoing reservation of rights is acknowledged, we look forward to a good faith exchange as to whether response to the subpoena is consistent with the privilege asserted in my letter dated April 5, 2010.

Thank you.

Very truly yours,

O'DWYER & BERNSTIEN, LLP

GARY SILVERMAN

cc: Cheryl A. Felice,
AME President