CITY OF NORWALK
HUMAN RELATIONS COMMISSION
PUBLIC HEARING
MARCH 12, 2009

ATTENDANCE : Carol Frank, Chair; Karen Tobin, Daisy Franklin, Diane Paladino, Andrew Mattiello, Julius Gamble, Elizabeth Merced-Surapine, Vicky Su, (6:50 p.m.) Rahoul Dupervil (6:50 p.m.)

STAFF: Adam Bovilsky, Human Relations

OTHERS: Kevin Fernandes, Atty. Williams, Yankee Gas; Atty. Zolot, International Brotherhood of Electrical Workers, IBEW No. 420; Robert Grossman, Yankee Gas, Bret Factora, Yankee Gas

The Chair called the meeting to order at 6:39 p.m. She then introduced the Commissioners and stated that the Human Relations Committee would be holding a hearing on the matter of Kevin Fernandes vs. Yankee Gas and Kevin Fernandes vs. International Brotherhood of Electrical Workers, IBEW No. 420.

Let it be noted that the following comments and remarks by all speakers have been summarized and are not necessarily verbatim.

The Chair then reviewed the rules for the hearing, how the parties would be notified of the Commission's decision and the appeal process. Following this, The Chair swore all those who would be presenting evidence.

The Chair then requested the list of the documents submitted as evidence, which Mr. Bovilsky did. He stated that each party has received a copy of the documents listed.

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Mr. Fernandes came forward and stated that he had been with Yankee Gas since 1980 for roughly 29 years, six of which was Northeast Utilities and the remaining 23 years with Yankee Gas. Mr. Fernandes then requested a brief recess.

RECESS

The Chair announced a brief recess at 6:48 p.m. The hearing reconvened at 6:53 p.m.

HEARING: CASE 228-08E CONT'D

The Chair then announced that Mr. Fernandes requested that his written statement into the record. She then read the following into the record:

To Whom It May Concern:

> My name is Kevin Fernandes and I have been employed by Yankee Gas since 1980. With 23 years of gas experience, I pride myself on learning my craft well and I am well respected among my colleagues. Due to the respect from my colleagues, I mastered my craft and the higher management made me chief of Norwalk's street Department in 2001. Since then, I've held the responsibilities over every job I received. However, sadly, after a short medical leave, I was informed that another employee who had less seniority and less manager experience had been given the title as a "chief". [Inaudible] I had more years of experience and [inaudible] on the job. I find this to be unfair and unjust since I had been in the position and after so many years, [inaudible] only to be taken away and more significantly, this went against the Yankee Gas Employee Manual. I really don't understand why I am siding against my union, who I feel should have my best interest as an employee. I have notified them of the serious issues with my job and to date [inaudible] as strongly I believe that the union is playing favoritism card and would prefer to see someone else in the title of Senior Chief. And I would like some answers to why the change and a fairer solution to this issue. Thank you for your time, Kevin Fernandes.

Atty. Williams came forward and stated that Yankee Gas denies all allegations of discrimination in Mr. Fernandes' original complaint. Mr. Fernandes alleges that the delays in his promotion to chief was due to discrimination. There was no discrimination based on race in the decision to delay the promotion.

Secondly, Mr. Fernandes alleged that there was discrimination in not being the first to have an upgrade. Again, Yankee Gas denies this allegation. Atty. Williams stated that it was the practice to rotate the upgrades, which is what happened in this case. Mr. Fernandes alleged that there was discrimination based on the correction of his seniority date from a 2001 date to a 2002 date. It is the position of Yankee Gas that the decision was made based strictly on the contract and in no way indicates any type of discrimination based on race.

In closing, Atty. Williams stated that there has not been any information or evidence of discrimination from Yankee Gas.

Atty. Zolot came forward and reminded everyone that they had heard Mr. Fernandes' opening statement and that the most significant point was that there was a failure to relay any discrimination based on race, color, gender or creed. Mr. Fernandes' issue is that he was not promoted. The Union is responsible for all the members and that the contract is

the worker's Bible and it must be applied to all the members. Based upon the terms of the contract, a decision was made to promote another employee to the position. Later Mr. Fernandes was promoted and then later that this had been done improperly. When the Union discovered this, the Union had to apply the terms of the contract. This had nothing to do with discrimination against race, color, gender or creed or anything other than the terms of the contract. This should be decided via the National Labor Relations Board. Atty. Zolot then respectfully requested hat the matter be closed.

Mr. Fernandes requested that Mr. Bret Factora come forward. Mr. Factora did so and Mr. Fernandes asked Mr. Greg about the day he was promoted. Mr. Factora explained that he remembered the conversation regarding his promotion. Mr. Fernandes then asked Mr. Factora if he remembered whether Mr. Grossman was present. Mr. Factora said that he did not recall the specific conversation with Mr. Grossman

Atty. Williams asked Mr. Factora if he remembered the conversation when the decision to promote Mr. Fernandes to the position of Chief. Mr. Factora said that he did not remember the specific date but he did remember Mr. Fernandes' promotion to chief. Mr. Factora stated that Mr. Fernandes had been promoted to chief; Mr. Fernandes requested that his promotion be set to the same date as Mr. Grossman's promotion. Mr. Fernandes asked if he remembered Mr. Grossman being present. Mr. Factora said that he did not recall that but remembered talking to Mr. Grossman about the issue at some point.

Mr. Factora was then asked if he remembered what happened on February 17, 2002 when the decision was made to promote Mr. Fernandes to chief and who made that decision by Atty. Williams. Mr. Factora said that he had made that decision after speaking with his boss at the time. Atty. Williams asked how this came about. Mr. Factora said that a decision had been made to promote Mr. Grossman to chief earlier and that Mr. Fernandes was not happy about this. In February, it became necessary to have another chief because there was more work and there were more employees. When Mr. Fernandes was promoted, he requested that his promotion date be entered as the same date as Mr. Grossman's was. Mr. Factora said that he believed that this was reasonable request and that there had been a practice of rotating the chiefs at the time and this did not appear to be a significant change. Mr. Factora then sent the request directly to Human Relations. The information was entered by Human Relations. He said Atty. Williams then asked Mr. Factora if he had the authority at the time to do this. Mr. Factora said that he did make the request, but was against the contract language.

Atty. Zolot asked Mr. Factora if he had contacted the union representative about this change of date. Mr. Factora said he had not.

Ms. Tobin then asked when Mr. Factora notified the employer, employee and others that he had no authority to adjust the date. Mr. Factora said that he did not notify anyone, the issue came to the attention of the union a year later.

Ms. Tobin asked if there was any supervisor that reviewed the form. Mr. Factora said that he had sent it to HR. Mr. Factora replied that he sent it to HR.
Ms. Su asked whether this date change was written down on any form. Mr. Factora said that he had filled out the form and sent it to Human Relations.

Atty. Zolot then asked Mr. Bovilsky to clarify his role in the hearing, which Mr. Bovilsky did.

Mr. Bovilsky then asked Mr. Factora was then asked if he had discussed Mr. Fernandes' promotion with anyone else. He replied that he had discussed this with his supervisor and Mr. Fernandes' supervisor at the time.

Mr. Factora then explained that Mr. Grossman was promoted because he understood the gas system in the Stamford area. He went on to explain that Norwalk and Stamford have two separate gas districts and two separate contracts. Stamford's terms were called the "green book" and Norwalk's was referred to as the "blue book". Later these were combined into one contract, referred to as the "white book". All the employees moved to the Norwalk office and are now under the same contract. In the new contract, there was an agreement that when filling an old "green book" position, the union was to go to the "green book employees" first. When the position opened up, there were more customers in Stamford, more employees in Stamford and more work in Stamford. This was why the decision was made to use a "green book" employee. Mr. Grossman happened to be the most senior "green book" employee in Norwalk, so he was offered the position.

Mr. Bovilsky asked Mr. Factora if he remembered the original interview Mr. Factora had with Mr. Bovilsky. Mr. Factora then listed a number of items that had been discussed about Mr. Fernandes' employment with the company. When asked, Mr. Factora said that he did not believe he had mentioned the aspect of the job that had to do with the Stamford geography.

Mr. Fernandes then called Mr. Bob Grossman forward as a witness.

Mr. Fernandes asked Mr. Grossman if he remembered the conversation when Mr. Factora, Mr. Grossman and Mr. Fernandes asked about Mr. Fernandes having his promotion date set back to Mr. Grossman's date.

Atty. Zolot objected, saying that the question was incomplete and needed to have a time frame.

Mr. Fernandes rephrased the question. Mr. Grossman said that he wasn't sure.

Atty. Zolot then asked Mr. Grossman if he could place the conversation in a time frame. He then asked Mr. Grossman how long after he had been promoted this conversation had taken place. Mr. Grossman said that he believed it was less than a year later, probably about nine months after his own promotion.

Ms. Tobin asked Mr. Grossman if he had ever objected to the change in the date. Mr. Grossman said that he objected to this some six years later when Mr. Fernandes had announced he was senior chief. When the change was originally made, Mr. Grossman said that he and Mr. Fernandes were sharing the upgrade. Mr. Grossman then said that he went to the Union representative about this and they determined that Mr. Grossman had been promoted first. Mr. Grossman then went on to explain the details of promotions and the subsequently impact of the actions.

Mr. Dupervil asked Mr. Grossman if he knew that Mr. Fernandes was improperly promoted. Mr. Grossman stated that he did not know this and would not have known about this.

Ms. Tobin asked about the details about the rotation of supervisors, which Mr. Grossman reviewed with the Commission.

Mr. Bovilsky asked Mr. Grossman when he was promoted to the position. Mr. Grossman said that it was in 1999. Mr. Bovilsky then asked if Mr. Grossman had a position with the union. Mr. Grossman said that he did and that he was a shop steward in 2000 and now was an ABA. Mr. Bovilsky then asked Mr. Grossman to explain the concept of the "green book" and the "blue book". Mr. Grossman then did so. He then reviewed the fact that two years after the combination of the two groups into one group.

Mr. Fernandes then called Mr. Picone, who came forward and said that he worked for Northeast Utilities as the Senior Labor Relations Consultant. Mr. Fernandes then asked if Mr. Picone recalled the conversations that he had with Mr. Fernandes on the phone. Mr. Picone said that he did recall the conversations. Mr. Picone said that he remembered receiving a call during the fall of 2007 from a Mr. Stockmar from Yankee Gas asking for research on the issue. Mr. Fernandes then asked Mr. Picone if he remembered his conversations with Mr. Fernandes. Mr. Picone said that he believed that he spoke with Mr. Fernandes in early December about and that Mr. Picone tried to explain the difference between classification seniority and company seniority. Classification is used for upgrading and promotion. Company seniority is used for job postings and purposes of reduction. Mr. Picone went on to say that classification seniority is linked to how long someone is officially in a position and that by the definition in the contract, an employee can not accrue seniority in a position that the employee did not occupy. The date was changed to the earlier date in error and an employee can not accrue seniority in a position that he did not hold. Mr. Picone said that he had unsuccessfully tried to explain this to Mr. Fernandes several times.

Atty. Williams then asked Mr. Picone to relate how he first became acquainted with this issue. Mr. Picone repeated that he had received a call from Mr. David Stockmar about this. Atty. Williams then asked Mr. Picone to outline the duties that his department handles. Mr. Picone then listed the various duties that his department performs. Atty. Williams asked Mr. Picone what he did when he had received the call from Mr. Stockmar. He said that he did not know Mr. Fernandes, so he checked Mr. Fernandes' personnel file and saw the payroll change request, which authorized the change in seniority. The form did not look correct, so he then contacted Mr. Factora. When he asked about the seniority date change, he discovered what had happened. While it may have been a benevolent action, it was against the contract terms and that the union had a duty to uphold the contract. Upon hearing the answer, Mr. Picone explained that he had no choice but to change the seniority date. Atty. Williams asked if it was common practice to review various employees' jackets. Mr. Picone said that he frequently has to review employee's histories. Atty. Williams then asked if he was governed by the contract terms. Atty. Williams asked if there was any other possible outcome for the situation. Mr. Picone said that there was no other outcome possible.

Atty. Williams asked if Mr. Picone knew Mr. Fernandes before he received the call about this situation. He stated that he had not met Mr. Fernandes before tonight. Atty. Williams asked Mr. Picone whether at the time when he received the call if he knew Mr. Fernandes' race, creed or national origin. Mr. Picone said that he did not know Mr. Fernandes' race, creed or national origin. Atty. Williams then asked Mr. Picone if his decision to change the seniority date was based in any way on Mr. Fernandes' race, color or national origin. Mr. Picone said that it was not. Atty. Williams asked Mr. Picone if he had met Mr. Fernandes before tonight. Mr. Fernandes said that he had not.

Atty. Williams then asked Mr. Picone if he knew Mr. Grossman. Mr. Picone explained that he had met Mr. Grossman a few months ago during some negotiations, but did not know him during the time he was working on the issue and when he made the decision. Atty. Williams then asked if the decision was based solely on the contract and the personnel file. Mr. Picone said that this was so.

Atty. Zolot said that he had no questions.

Mr. Bovilsky asked about when the vacancy occurred in Mr. Fernandes' book. Mr. Picone said that he did not know. Mr. Bovilsky asked if the information about when the vacancy happened was in the file. Mr. Picone said that information would not be included in the file. Mr. Bovilsky asked what the contract required in terms of having a vacancy filled. Mr. Picone said that a vacancy could theoretically be vacant forever. The company must notify the union within two weeks if the company decides not to fill a vacancy.

Mr. Bovilsky then asked about grievances being presented in a timely manner and whether Mr. Picone has denied a grievance because it was not presented in a timely manner. Mr. Picone said that there had been occasions when grievances were denied because they were untimely. Mr. Bovilsky then asked several details about the dates involved in case. Mr. Picone explained that this was not really a grievance, but an inquiry with respect to seniority and that he had an obligation to follow through to the correct conclusion. Mr. Bovilsky asked about Yankee Gas posting a seniority list. Mr. Picone said that the company does post a list on a quarterly basis. Mr. Bovilsky then asked Mr. Picone what the responsibilities of the Director of Gas Operations. Mr. Picone replied that he was out of his field on this, but it was for the safe and efficient operation of gas distribution system. Mr. Bovilsky asked Mr. Picone if he was aware that Mr. Witt, the Director of Gas Operations and Mr. Factora's supervisor, had given approval to the change in date change. Mr. Picone said that he was not aware of this when he was reviewing the jacket.

Mr. Bovilsky said that Mr. Grossman was promoted while Mr. Fernandes was injured and out of work. He then asked if this could have played into the decision to Mr. Grossman. Mr. Picone said that he did not know, but Mr. Factora said that it was based on other criteria.

The Chair then asked if it was the practice of the company to remove someone from the position in situations like this. Mr. Picone said that in this particular case, it was just the seniority date that was improperly changed. Mr. Fernandes will keep his classification as "chief", but the date needs to be corrected. Mr. Fernandes would not lose any status in terms of classification.

Ms. Tobin asked for clarification about this. Mr. Picone said that Mr. Fernandes would not lose his title as "chief" but the seniority would be adjusted to the correct date Mr. Fernandes was promoted. Mr. Fernandes lost the portion of the seniority that he originally had no right to.

Mr. Fernandes then came forward to testify on his own behalf. Mr. Fernandes said that he was senior to Mr. Grossman and that he could not understand why this was being handled the way that it was. He did not believe that this was right. He said that he would like someone to prove to him why Mr. Grossman was senior. He stated that he would like someone to tell him why when he was doing his job and it was taken away from him.

Atty. Williams asked who discriminated against him at Yankee Gas based on his race. Mr. Fernandes said that he did not think it was the company, but that it was the union.

Atty. Zolot asked Mr. Fernandes how the Union had discriminated against him. Mr. Fernandes said that he did not know, but the Union had just taken something away from him. The Union told him he was wrong, but Mr. Fernandes said that he had done

everything above board. Atty. Zolot asked if Mr. Fernandes understood the contract. Mr. Fernandes said that he understood as much as anyone. Atty. Zolot then asked Mr. Fernandes if he would believe the Union if the Union told Mr. Fernandes that the position had been taken away from him other because it was the way that the contract had read. Mr. Fernandes said that he always thought that seniority was of primary importance. Atty. Zolot said that wasn't what he asked. Atty. Zolot then repeated the question. Mr. Fernandes said no.

Mr. Dupervil asked how long Mr. Fernandes had been promoted to the lead position before Mr. Grossman. Mr. Fernandes said that it had been about two years.

Ms. Tobin asked Mr. Fernandes when he had first complained about Mr. Grossman being promoted. Mr. Fernandes said that someone had pushed in front of him before. Ms. Tobin asked about this and Mr. Fernandes said that he had failed a test, he had not been given a chance to retest and a Mr. Peter Rubino had been pushed in front of him. When the issue with Mr. Grossman arose, he became concerned again. Ms. Tobin then asked if Mr. Fernandes had discussed this with his co-workers in regards to race or color. Mr. Fernandes said that he did not pursue the issue regarding Mr. Rubino, but he had discussed the issue regarding Mr. Grossman with a few of his co-workers, Mr. Massey and Mr. Williams. Ms. Tobin asked Mr. Fernandes when he began to consider taking action. Ms. Tobin asked Mr. Fernandes when he began to believe that he was being discriminated against. Mr. Fernandes said that he had being talking with someone and later found out that the person was a union representative.

Ms. Tobin asked Mr. Fernandes who had approached when he found out that his promotion date was being changed. Mr. Fernandes said that he went to Mr. Factora about this. He said that he was concerned about his seniority and reminded him that he had been in the company for 29 years. He then said he did not recall exactly what he had told Mr. Factora. Ms. Tobin then asked Mr. Fernandes if he had threatened Mr. Factora with legal action in any way. Mr. Fernandes said he did not.

Ms. Su asked whether Mr. Fernandes had felt that he was being discriminated against when Mr. Factora had granted him the change of date for the promotion. Mr. Fernandes said that when the date of his promotion was set to the same as Mr. Grossman's everything was fine and he was senior to Mr. Grossman. It was only when his seniority date was set back to the actual promotion date that he felt he was being discriminated against.

Mr. Bovilsky said that the union had told Mr. Fernandes that because Mr. Grossman was a union representative, the union would side with him. Mr. Fernandes agreed. Mr. Bovilsky then asked if Mr. Fernandes believed that this was the main reason that the union chose Mr. Grossman over Mr. Fernandes. Mr. Fernandes said that he did.

Atty. Williams said that she would like to recall Mr. Factora to the stand. Atty. Zolot requested a recess.

RECESS

The Chair called a recess 7:55 p.m. The meeting reconvened at 8:10 p.m.

HEARING: CASE 228-08E CONT'D

Atty. Williams said that Mr. Fernandes had come to the end of his case and that Yankee Gas was seeking a dismissal of the complaint against Yankee Gas based on the fact that Mr. Fernandes had said that there was no discrimination on the part of Yankee Gas. He went on to say that he was not discriminated against by any party from Yankee Gas. Atty. Williams then repeated her request that the case be dismissed.

The Chair said that Atty. Williams's objection was noted but that the hearing would be continued.

Atty. Zolot said that he would also like to request that the case be dismissed. Atty. Zolot stated that this was not a case of operational discrimination, but a case about seniority. That seniority was to be exclusively based upon time of service. Mr. Fernandes refuses to accept the fact that the classification seniority prevails in this situation. He then repeated his request that the case be dismissed.

The Chair said that Atty. Zolot's objection was noted but that the hearing would be continued

Atty. Williams called Mr. Factora forward. She then asked him about the details of his testimony regarding the "blue book" and the "green book". Mr. Factora then gave an overview of the situation. Atty. Williams then asked why Mr. Fernandes had not been promoted in 1999. Mr. Factora said that at the time, the company was not promoting anyone to chief because there were two person crews and the company was only doing maintenance work. With two person crews, there is a lead mechanic but no chief. Atty. Williams asked why Mr. Grossman was promoted in 2001. Mr. Factora explained that Yankee Gas had been purchased by Northeast Utilities and that the combination of the two branches resulted the creation of three person crews, the work expanding beyond just maintenance mostly in the Stamford area. In the new contract called the "white book" there was a requirement that the most senior person in the Stamford area from the "green book" be promoted. This was Mr. Grossman.

Atty. Williams asked if the decision to promote Mr. Grossman related in anyway to race, color or national origin. Mr. Factora said that it was not. Atty. Williams asked if it was strictly a business decision. Mr. Factora said that it was.

Atty. Williams then asked why Mr. Fernandes was promoted in 2002. Mr. Factora said that there was a increase in the work and that the company needed more crews. Atty. Williams asked if Mr. Fernandes actually was promoted on February 17, 2002. Mr. Factora said that was the date that Mr. Fernandes had been promoted. He said that Mr. Fernandes had been unhappy with the promotion of Mr. Grossman before he had and the change in the promotion date was done to appease Mr. Fernandes. Atty. Williams asked for a definition of classification seniority. Mr. Factora said that it refers to the actual time that an employee occupies the given position. Atty. Williams asked if Mr. Factora has agreed to the retroactive dating of Mr. Fernandes' promotion because Mr. Factora had felt that Mr. Fernandes had been denied the seniority because of race, color or national origin. Mr. Factora said no.

Atty. Williams then asked what had transpired during his conversation with Mr. Picone regarding this change of promotion date. Atty. Williams asked Mr. Factora if changing the date on the promotion would have any impact on the day to day functioning of the employees, or on the upgrades to supervisor. Mr. Factora said that at the time, there was a rotation of all the chiefs to supervisor. Mr. Factora then reviewed this. Atty. Williams asked what Mr. Picone had discussed with Mr. Factora. Mr. Factora explained that Mr. Picone had asked whether HR had approved the change and then pointed out that the change was not according to the contract and should not have been done. Atty. Williams asked Mr. Factora if he understood following that conversation that he should not have changed the date. Mr. Factora replied that he had. Atty. Williams then reviewed the events and concluded by asking Mr. Factora if any of the decisions had been made with reference to Mr. Fernandes' race, color or national origin. Mr. Factora said they had not.

Atty. Zolot asked if when Mr. Fernandes had sustained a reduction in pay when the date was changed back to the original date. Mr. Factora said that Mr. Fernandes' pay had not been reduced. Atty. Zolot then asked if Mr. Fernandes had retained the title of "chief". Mr. Factora said that Mr. Fernandes had retained the job title. Atty. Zolot asked what Mr. Fernandes was really seeking by having this change made in the records. Mr. Factora said that he did not know. Atty. Zolot asked if Mr. Fernandes had ever said that he had felt he was being discriminated against because of his race or color. Mr. Factora said that he did not.

Ms. Tobin then commented that Mr. Factora seemed well versed in the contract terms and asked about Mr. Factora's position during the promotions. Mr. Factora said that he was involved in the promotions and that he was the operations manager for the Norwalk area. Ms. Tobin said that when Mr. Bovilsky had originally interviewed Mr. Factora, his answers at that time were significantly different from his answers now. Mr. Factora said that his recollection had originally been unclear. He then reviewed the paperwork. Ms. Tobin questioned whether Mr. Factora said he had not mentioned the "green book" and the "blue book" issues. Mr. Factora said that he simply had not recalled it at the time. Ms. Tobin asked whether Mr. Fernandes had expressed his dismay about Mr. Grossman

being promoted before him. Mr. Factora said that he had known Mr. Fernandes was unhappy about this and questioned why this had been done.

Mr. Factora explained that he was no longer the manager in Norwalk and had transferred to Waterbury in December of 2004. He said that he had no input on the decisions made after that time. Ms. Tobin asked if Mr. Fernandes had ever refused an offer of an upgrade. Mr. Factora said that he did not know.

Mr. Bovilsky asked Mr. Factora if he had wanted to give Mr. Fernandes a promotion. Mr. Factora said that when Mr. Fernandes was promoted, there was the need for another chief and to appease Mr. Fernandes, he was promoted. It was Mr. Fernandes' idea to predate the promotion, which Mr. Factora said that he agreed to do. Mr. Bovilsky asked if Mr. Fernandes' absence due to his injury had an impact on the decision to promote. Mr. Factora said that it did not.

The Chair asked if the "blue book" and the "green book" equal in every way other than the locations. Mr. Factora said there was subtle difference in the language in the two books, but could not call to mind any examples.

Mr. Dupervil then asked about details of the promotions. Mr. Factora explained that there is a difference between classification seniority and company seniority. Mr. Dupervil asked about the criteria involved in the promotions. Mr. Factora then reviewed this with the Commission. Mr. Fernandes has longer company time, but Mr. Grossman had the classification seniority. According to the new "white book", there was a requirement that a Stamford replacement be replaced by a former Stamford employee. Mr. Factora said that he did not make a choice to disregard the contract, but simply did not understand it. Ms. Tobin had several detailed questions about classification seniority, which Mr. Factora answered.

Atty. Williams then called Ms. Nancy Monde forward. Ms. Monde said that she was the Human Resources Business Partner at Yankee Gas. She said that she provides consulting advice to the company regarding HR issues. Atty. Williams then asked Ms. Monde to review the process for promotions, which Ms. Monde did. Atty. Williams then called the attention to Exhibit 12 located in the packet. Atty. Williams then asked several questions about the form that was in the Exhibit. Ms. Monde said that it was the form that was used and it was her job to insure that the information was appropriate and that the promotion abided by the contract. She explained that if she had received a request, she would have reviewed it, called Labor Relations to verify that it was in accordance with the contract and upon their advice, sign or not sign the form. She did not review this application. The form was processed by her assistant without her knowledge or authority. The form was not approved by her because her signature was not on the form.

Atty. Williams then directed the Commission attention to Exhibit 29. Ms. Monde then identified the form as one that is printed off the HR database giving general information about an employee. She then asked if there was a form like this generated for Mr. Fernandes' file. Ms. Monde said that she believed it was. Atty. Williams then asked Ms. Monde what was written on the bottom of the form. She then stated that the notation on the bottom of the form reads "Approved by HR". When Ms. Monde was asked if she had written this on the form, she said no and that if the form had been approved by HR it would have said the date and had the name or initials of the HR employee on the form.

Mr. Fernandes then stated that he had been told that this was approved and he had been the one who had circled the item on the form. He said that was why he circled it. Since then he has been accused of forgery.

Ms. Su asked if there were any other incidents in the company's history that would have been similar to this. Ms. Monde said she was not aware of any.

Ms. Tobin asked where the document was stored. Ms. Monde said that it was stored in HR. Ms. Tobin pointed out that that the note was circled. Ms. Monde said that an HR employee would put their initials. Ms. Monde stated that "Approved by HR" was what was written on Exhibit 29.

Atty. Williams then gave Ms. Monde a copy of the same type of form that did not have a note on the bottom regarding the approval of HR.

Ms. Tobin then questioned why Ms. Monde's assistant would have processed the form. Ms. Monde said that she did not approve this. Ms. Tobin asked how this was put into the system without her approval. Ms. Monde said that she did not know. Ms. Tobin said that there was only one promotion with a problem and this was the only one that Ms. Monde did not sign. Ms. Monde said that this form had been put in the system by error and that this did not equal approval from HR. Ms. Tobin asked if Ms. Monde's assistant had been questioned as to why this was done. Ms. Monde said that her assistant was no longer with the company. When asked if there were any other forms that had been processed like this, Ms. Monde said that this was the only one that she was aware of.

Mr. Dupervil asked if Mr. Fernandes had received the salary change on the form. Ms. Monde said that he would have received the salary change. She said Mr. Dupervil asked how the form would have been entered and who would have had access to the forms. Ms. Monde said that typically she would have signed the form and given it to her assistant to input into the system. Mr. Dupervil asked when Ms. Monde had found out about this. Ms. Monde said that she had found out about the situation when she was contacted by Mr. Factora. When asked further about her assistant, Ms. Monde stated that her assistant was not working for the company any more.

Atty. Williams then gave Ms. Monde another form and requested that she identify it. Ms. Monde said that it was the form identical to the earlier form, Exhibit 29, but without "Approved by HR" on the bottom. Atty. Williams then asked several detailed questions about the form and who would have access to the form, which Ms. Monde answered.

Mr. Bovilsky asked about the signatures on the form and who would have signed it. Ms. Monde answered. Mr. Bovilsky then asked if there was any way that Mr. Fernandes would have known that the change was not approved by HR. Ms. Monde said that she did not believe Mr. Fernandes would have known.

The Chair asked Ms. Monde if she had seen this form, she would have approved it. Ms. Monde said that she would not have because there was no provision in the contract for retroactive promotions.

Ms. Tobin then asked several questions about the details of this form and the quarterly seniority report, which Ms. Monde answered. Ms. Tobin then asked how many of these HR Action Notices passed through Ms. Monde's office. Ms. Monde said that she didn't know. Ms. Tobin suggested more than a 100. Ms. Monde said that more than 100 was possible, but said repeatedly that she did not know. When Ms. Tobin pressed further, Atty. Williams objected and pointed out that Ms. Monde had already stated that she did not know several times. Ms. Tobin then asked how often Ms. Monde used the form. She explained that she did not use the form anymore and that the changes arrive daily electronically now. Ms. Tobin the asked if this was the only form that was processed without Ms. Monde's signature. Ms. Monde said that this was the only one that she was aware of.

Atty. Williams asked Ms. Monde if she had stated that this was the only form that she was aware of that had been processed without her signature. Ms. Monde said yes. Atty. Williams then asked why Ms. Monde had become aware of this. Ms. Monde said that it was brought to her attention by Mr. Picone and Mr. Factora. She was then asked if other than the seniority issue being raised, if she had become aware of forms she had not approved. Ms. Monde said no.

The Chair asked Ms. Monde how many years she had been in her position with the company. Ms. Monde said that she had been in her position since July of 2001.

Atty. Zolot asked Ms. Monde asked if she still had Exhibit 12. When Ms. Monde said that she did not, she was provided with a copy. Atty. Zolot said that Ms. Monde had stated she did add the checkmarks and comments on the form. He then asked her who added them. Ms. Monde said that she did not know, but presumed that it was her assistant who entered the data. He then asked her to read the notation on the form. Ms. Monde said it read "Prom. No increase. 4/22/01." Atty. Zolot then asked if Mr.

Fernandes had received a retroactive wage increase. Ms. Monde said that Mr. Fernandes had not received a retroactive wage increase.

RECESS

Atty. Zolot requested a recess at 9:04 p.m. The hearing resumed at 9:21 p.m.

HEARING: CASE 228-08E CONT'D

Atty. Zolot requested that Mr. John Unikas, the business manger for the Union came forward. Atty. Zolot asked about the details of the Human Resources Action form that had a handwritten note regarding HR on the promotion. Mr. Unikas said that Mr. Fernandes spoken with him about the form and that there was no notation on the copy that Mr. Unikas had. Mr. Fernandes became upset and then kept saying that it had "Approved by HR" on the bottom. Mr. Unikas said that he had contacted Mr. Picone and that Mr. Picone had faxed him a second copy of the form with the note on it. He was then asked who had written "Approved by HR" on the form. He said that he did not know who had written this on the form.

Mr. Fernandes said that he was looking at Exhibit 13 and Exhibit 30. Mr. Unikas said that he was not sure what Mr. Fernandes was speaking about. Mr. Bovilsky said that they were Exhibits 12 and 29. Mr. Fernandes stated that he was told by someone on the phone that the form had been approved by HR and he had circled that on the form. He said that he was not a liar or a forger. He repeated this several times.

Ms. Su said that she did not see any point in spending further time establishing the fact that HR did not approve the promotion. The fact was that the form was processed and entered into the system.

Ms. Tobin asked Mr. Unikas about the fact that Mr. Fernandes had not appealed to the Union or requested their assistance. Mr. Unikas then explained that the Union had investigated the situation and that seniority was sacred to the union. When the situation was investigated, it was determined that the promotion date had been changed improperly. Ms. Tobin asked several questions about the determination process as to who was the senior chief.

Atty. Zolot objected to some of the speculative terms in Ms. Tobin's questions.

After a brief exchange with Atty. Zolot, Ms. Tobin rephrased her questions. Mr. Unikas then reviewed the different details of the contract languages for both Norwalk and Stamford. This was not an issue in 2002 but became an issue in 2007.

Ms. Tobin then directed everyone to Exhibit 28, which shows the upgrades for the time period fro the time period from 2003-2008. Mr. Unikas said that he was not familiar with

this particular document. She asked several detailed questions about the information on the form, which Mr. Unikas answered regarding the former practice of rotation the upgrades. Ms. Tobin asked if the Union had not rescinded the retroactive promotion date, if Mr. Fernandes would be receiving the upgrades. Mr. Unikas said that he believe that this would be so. When asked what the pay differential would be, Mr. Unikas said that he believed it would be about $1.50 per hour upgrade to supervisor. Ms. Tobin asked Mr. Unikas how long he had occupied his position. Mr. Unikas said that he had occupied the position of Business Manager since 2004. Ms. Tobin asked if there had ever been another instance where an employee was promoted and HR claimed not to have known about it. Mr. Unikas said that he had never seen a situation like this before.

Mr. Dupervil asked how long Mr. Unikas had been with the Company. Mr. Unikas said that he had spent 33 years in the field and five years as Business Manager. Mr. Dupevil had several questions about Mr. Unikas's knowledge regarding the merging of the two branches and his position at the time, which Mr. Unikas answered. Mr. Unikas pointed out that the membership voted on a contract to merge the "blue book" and the "green book".

Ms. Tobin asked several questions regarding whether the Union would have known about this promotion. Mr. Unikas stated that Mr. Fernandes has the right to file a claim against the Union. Ms. Tobin asked if Mr. Fernandes had come to Mr. Unikas at the time when he was originally not promoted, whether there would have been an investigation. Mr. Unikas explained that in 2001, he was in the field. Ms. Tobin then asked if the Union would have investigated. Mr. Unikas explained that the Union would like to be involved in any matter that would involve seniority. Mr. Unikas said that personally, he would never approve a promotion without a pay increase. Ms. Tobin said that the situation was very unusual and it appeared that someone tried to sweep it under the rug. Mr. Unikas agreed.

Mr. Bovilsky asked whether Mr. Unikas was familiar with the terms of the white book and how vacant positions should be filled. Mr. Unikas said that he believed it said two weeks and that if the company decides not to fill the position, they must notify the union. Mr. Bovilsky asked if Mr. Unikas knew whether there was notification of the vacancies in 1998 and 1999. Mr. Unikas said that he was a lineman in 1998. Mr. Bovilsky asked if the file could have been checked. Mr. Unikas said that he had not found anything in the file.

Mr. Bovilsky said that the Company was suggesting that there was an error made in regards to Mr. Fernandes date being made retroactive. He then asked if Mr. Unikas felt this was an error. Mr. Unikas said that he did. Mr. Bovilsky then asked when an error is made, if an investigation would follow. Mr. Unikas said that a grievance might not be filed and that an investigation would be done. Mr. Bovilsky asked if filing a grievance would have to be done in a timely manner. Mr. Unikas said that they would. Mr.

Bovilsky said that he was concerned about the fact that Mr. Grossman knew that Mr. Fernandes had been given the retroactive date, but it never became an issue. He then asked whether Mr. Grossman had ever complained about situation. When the issue came up at the end of the rotation of upgrades, that's when the retroactive date became a problem. Mr. Bovilsky asked whether Mr. Fernandes had been notified when the rules were changed. Atty. Zolot objected to the use of the phrase "changing the rules" in reference to the negotiated union contract. Mr. Bovilsky asked if the Union considered an agreement with the company regarding this situation. Mr. Unikas said that the Union did not.

Ms. Tobin asked why this had not been done. Mr. Unikas explained that the language in the white book contract was specific in regards to this. He said that he could not change contract language because it is a signed, sealed contract with the company.

Ms. Tobin asked about Mr. Unikas's response regarding the fact that the promotion was in error. Mr. Unikas stated that he had stated that the changing of the promotion date was in error. Ms. Tobin asked if this was in contraction of the contract. Mr. Unikas said that it was in contradiction to seniority. Ms. Tobin asked if the error was something that the Company did not mean to do or something that it should not have done. Mr. Unikas said that he did not know what Ms. Tobin was asking about, but that the change should not have happened.

Atty. Zolot stated that there had been a number of questions about interpretations of the contract, past, present and future. He then asked Mr. Unikas whether Mr. Fernandes had ever complained to Mr. Unikas about any of the promotion decisions that were based upon race, or color. Mr. Unikas said absolutely not.

Ms. Tobin then asked Mr. Fernandes about the upgrades. She asked what impact of the seniority would have been if Mr. Fernandes had not lost his seniority. She asked if Mr. Fernandes had been offered an upgrade if he would have refused it. Mr. Fernandes said no. She then asked how much additional money would Mr. Fernandes estimated he would have received through the upgrade to supervisor. Mr. Fernandes said that he did not know. He said that he did not actually lose any money but lost his seniority.

The Chair asked Mr. Fernandes to proceed with his closing argument. Mr. Fernandes said that he had heard a lot of questions, some good, some bad. He was doing his job and it was taken from him and he could not do that.

In closing, Atty. Williams stated that the case against Yankee Gas should be dismissed because Mr. Fernandes himself had stated that Yankee Gas had not discriminated against Mr. Fernandes regarding race, color or national origin. She said that she was not surprised that during the hearing Mr. Fernandes did not prove his allegation of discrimination against Yankee Gas. Atty. Williams stated that it had been shown that

Yankee Gas did not delay his promotion due to race or color. The testimony showed that the delay was due to a legitimate, non-discriminatory need of the business. She then said that there was no merit to Mr. Fernandes' allegation that the correction of the seniority date was in any way related to race, color, or national origin. This correction was shown to be based on the contract. Based on the evidence presented, Atty. Williams said that Yankee Gas was renewing a request for dismissal.

Atty. Zolot said that this was strictly an issue of contract interpretation, as he had stated earlier. Mr. Fernandes stated that he did not believe that there was any discrimination against him by the Union or by the Company regarding his color, race or national origin. Atty. Zolot added that Mr. Fernandes retains his job, his title and the actual accrued seniority. He pointed out that the company had paid him at the higher rate for five years and that no one had asked for the pay differential back. Everything else is a matter of contract. He then respectfully requested that these charges be dismissed.

The Chair asked if there were any more questions from the Commission. Since there were no additional questions, she then closed the hearing regarding Case 228-08E.

The Chair stated that all parties would be notified of the Commission's decision within fifteen days and that an appeal could be filed with CHRO within thirty days of the decision.

**** MR. DUPERVIL MOVED TO ENTER INTO EXECUTIVE SESSION IN ORDER TO CONSIDER THE FINDINGS FROM THE HEARING.**
**** MS. TOBIN SECONDED.**
**** THE MOTION PASSED UNANIMOUSLY**.

The Committee entered into Executive Session at 9:52 p.m. to determine their findings in regards to Case 228-08E. The Commission returned to public session at 11:45 p.m.

**** MS. SU MOVED TO AUTHORIZE MR. BOVILSKY TO WRITE AN OPINION CONSISTENT WITH THEIR FINDINGS FOR THEIR APPROVAL REGARDING CASE 228-08E AT THE NEXT HUMAN RELATIONS COMMISSION MEETING.**
**** MR. MATTIELLO SECONDED.**
**** THE MOTION PASSED UNANIMOUSLY**.

ADJOURNMENT

**** MS. SU MOVED TO ADJOURN.**
**** MR. MATTIELLO SECONDED.**
**** THE MOTION PASSED UNANIMOUSLY**.

The meeting adjourned at 11:46 p.m.

Respectfully submitted

Sharon Soltes
Telesco Secretarial Services