STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
CONNECTICUT INDEPENDENT
POLICE UNION LOCAL #11

-and-

JANUARY 8, 2003

TOWN OF NORTH HAVEN

CASE NO. MEPP-21,843

J. Anthony Doran, Staff Attorney
For the Union

Attorney Michael J. Dorney
For the Town

DECISION ON MOTION TO DISMISS

On July 19, 2000, the Town of North Haven (the Town) filed a prohibited practice complaint with the Connecticut State Board of Labor Relations (the Labor Board), alleging that the Connecticut Independent Police Union Local #11 (the Union) had bargained in bad faith and had refused to comply with an arbitration award, in violation of § 7-470(b)(2) and § 7-470(b)(4), respectively, of the Municipal Employees Relations Act (the Act). In particular, the Town alleged that the Union violated the Act by filing a grievance regarding the proper calculation of police pensions after a previous arbitration award had already settled the issue.

After the requisite preliminary steps had been taken, a pre-trial hearing was held on November 21, 2000, and the parties entered into a partial stipulation of facts and exhibits. Thereafter, on April 4, 2001, the Union filed a Motion to Dismiss the Town's complaint with supporting memorandum of law, asserting that the Town cannot maintain its complaint in light of the Connecticut Supreme Court's holding in ***Town of Stratford v. IAFF***, 248 Conn. 108 (1999) that arbitrators are not bound, under the doctrine of collateral estoppel, by a prior arbitration award involving an interpretation of the same provision of a contract between the same parties.

A hearing was held before the Labor Board on April 18, 2001, at which the stipulated exhibits were entered into the record and a briefing schedule regarding the

Motion to Dismiss was established. The Labor Board received the Town's brief on May 18, 2001, and the Union's reply brief on June 1, 2001.

For the reasons set forth below, we deny the Union's Motion to Dismiss.

DISCUSSION

Factual Background

The stipulated record reveals the following undisputed facts. The Union and the Town have been parties to a series of collective bargaining agreements. The contract in effect during the events in question (July 1, 1996 to June 30, 1999, Ex. 17) contains a grievance procedure which defines a grievance as:

> ...a dispute between an employee and/or the Union and the Town over the application or interpretation of a specific section of this Agreement, or the discharge, suspension or demotion of an employee, or any act or condition involving hours of work, wages, or working conditions, concerning which an employee and/or the Union feel aggrieved.

The contract also contains a pension provision (Article 24) which provides in relevant part: "The parties agree that the Pension Plan in effect is the amended and restated plan which is effective January 1, 1991..." The 1991 Pension Plan defines "pay" as "the salary, wages or earnings of a regular member of the police department for his services to the Town." (Ex. 28).

On or about February 20, 1997, the Union filed a grievance on behalf of bargaining unit member Joseph DePoto (DePoto), challenging the calculation of his pension. (Ex. 21). In particular, the grievance asserted that DePoto's pension had been incorrectly calculated using his base salary, rather than "gross earnings." The Union argued that the definition of "salary" contained in the Pension Plan included any earnings, such as overtime. The grievance went to arbitration and an award was issued on January 14, 1999, in the Town's favor. (Ex. 24).

On or about May 31, 2000, the Union filed a grievance on behalf of bargaining unit member Richard Astorino (Astorino), making essentially the same claim that was made in the DePoto grievance. (Ex. 25). The Town denied the grievance on the basis that the issue had already been decided in favor of the Town. When the Union appealed the Astorino grievance to arbitration, the Town filed the instant prohibited practice complaint. In its complaint, the Town alleges that by pursuing the Astorino grievance, the Union is refusing to comply with the DePoto arbitration award in violation of § 7-470(b)(4) of the Act, and is also refusing to bargain in good faith in violation of § 7-470(b)(2). The Union responded by filing the instant Motion to Dismiss on April 4, 2001.

Legal Background

The Union's Motion to Dismiss requires us to consider for the first time the effect, if any, of the Connecticut Supreme Court's decision in ***Town of Stratford v. International Association of Firefighters***, 248 Conn. 108 (1999) on our prior line of cases holding that in some circumstances, the filing of one or more grievances can constitute a prohibited practice when the issue raised has been previously resolved through the grievance arbitration process. In the past, we have considered these claims under one of three theories: repudiation of contract, failure to comply with an arbitration award, or general failure to bargain in good faith. A review of these cases, all of which pre-date the ***Stratford*** decision, is therefore in order.

In the earliest decision, ***Bristol Federation of Teachers***, Decision No. 1656 (1978), the Board of Education alleged that the Union repudiated the contract and acted in bad faith when it filed two grievances challenging certain provisions that had been agreed upon in prior negotiations. Given the importance of the grievance arbitration scheme to public sector collective bargaining, the Labor Board was hesitant to penalize a party for legitimate resort to the grievance procedure.[1] However, the Labor Board acknowledged the possibility that the filing of a grievance could constitute a prohibited practice:

> ...[W]e shall assume, without deciding, that the filing of a grievance may constitute a prohibited practice under some circumstances. On that assumption, we hold that the filing of a grievance will not violate the Act[2] unless complainant sustains the burden of proving, by a fair preponderance of the evidence, that respondent filed the grievance in actual subjective bad faith in the sense that it knew the issue presented by the grievance was settled in prior negotiations so that the grievance itself amounted to a repudiation of an agreement previously reached.
>
> Of course such actual bad faith may be shown circumstantially, as where the claim embodied in the grievance flies in the face of clear contractual language. But unless we find such bad faith, we shall not find a prohibited practice.

Bristol Federation of Teachers, *supra* at 7 (emphasis in original). Applying this burden of proof to the facts of the case, the Labor Board dismissed the Board of Education's

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[1] In ***City of New Haven***, Decision No. 1325 (1975), a decision cited in ***Bristol Federation of Teachers***, the Labor Board expressed a similar reluctance to find a party's good faith pursuit of court litigation violative of the Act: "We are entirely unwilling to hold that resort in good faith to litigation to test one's legal rights constitutes a practice prohibited by the Act. In order to sustain its claim here the union must show that the litigation was instituted in bad faith and without an honest belief that the city's claim might prevail in court, or was improperly motivated as by anti-union bias." See also ***Hartford Board of Education***, Decision No. 2032 (1981). Because the instant case involves resort to the grievance arbitration process, we have not herein considered cases involving resort to court litigation, although the reasoning and analysis is similar.

[2] The "Act" referenced in ***Bristol*** is the Teacher Negotiation Act (TNA), Conn. Gen. Stat. §10-153a *et seq.* Both the MERA and the TNA contain similar provisions requiring unions and employers to bargain collectively in good faith.

complaint because there was insufficient evidence to show that the Union had filed grievances in subjective bad faith knowing that the issues had been conclusively resolved in previous contract negotiations.

In ***Ansonia Federation of Teachers***, Decision No. 2570 (1987), the Board of Education relied on the language in ***Bristol***, *supra*, to allege that a Union grievance was filed in subjective bad faith in repudiation of a clear and unambiguous side agreement. The Labor Board clarified:

> Our comments in Bristol about the role of contractual language as circumstantial evidence should not be read as a sign of a superficial test that precludes our overall assessment of the evidence. As the Board of Education acknowledges, the key criterion is whether or not there was subjective bad faith. We must look at all of the evidence to determine that.

Ansonia Federation of Teachers, *supra* at 4. The Labor Board thus incorporated a "totality of the circumstances" analysis to determine whether a grievance was filed for reasons inconsistent with the obligation to bargain in good faith as required by the Act.[3] The Labor Board concluded that the subjective bad faith discussed in ***Bristol*** was not established under the facts of the case and dismissed the Board of Education's complaint.

In ***IAFF, Local 944***, Decision No. 3128 (1993), the City of Milford alleged both a failure to bargain in good faith and a failure to comply with an arbitration award in violation of § 7-470(b)(4)[4] when the Union filed a grievance on an issue that had been previously resolved by a stipulated arbitration award. Applying its usual standard of review under § 7-470(b)(4),[5] the Labor Board found a violation of the Act in this case because the stipulated award clearly and unequivocally disposed of the issue in question. In addition, by including the phrase "from this date forward...". in the stipulated award, the Labor Board concluded that the parties fully intended the award to apply to future circumstances. An important aspect of the Labor Board's reasoning was that because the parties had agreed to the terms of the stipulated award, the Union should not have been allowed to deviate from language it participated in crafting.

In ***New Haven Board of Education,*** Decision No. 3356 (1996), the Board of Education alleged that by continuing to pursue certain overtime grievances, the Union repudiated the contract and failed to comply with seven previous arbitration awards, all of

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[3] ***Ansonia Federation of Teachers*** also was decided under the TNA. *See* footnote 2, *supra*.

[4] The prohibition against refusal to comply with a settlement agreement or arbitration award was contained in § 7-470(b)(3) at the time the ***IAFF, Local 944*** decision was issued. The subsection was renumbered by P.A. 93-426.

[5] "...[W]hen a party charges that there has been a refusal to comply with a grievance settlement or arbitration award, we will interpret the agreement or award to ascertain what it requires. We will then determine whether the respondent complied with those requirements. We will not find a valid defense in the fact that a party's action or inaction, which departs from our interpretation of the award's requirements, resulted from either a good faith or plausible interpretation of the award." ***City of Hartford***, Decision No. 3730 (1999) (internal citations omitted), *aff'd.* ***City of Hartford v. Hartford Municipal Employees Association***, 259 Conn. 251 (2002).

which had affirmed the City's contractual right to eliminate overtime. Reviewing the totality of the Union's conduct and the grievances at issue, the Labor Board concluded that "by pursuing the overtime elimination issue, after it was resolved in arbitration, the Union continued to pursue its interpretation of the contract in subjective bad faith and, therefore, repudiated the contract and failed to abide by the previous arbitration awards." ***New Haven Board of Education***, *supra* at 6. The Labor Board's decision was affirmed by the Connecticut Appellate Court, which stated that "the union's attempt to evade the arbitrators' decisions in the seven grievances concerning the employer's eliminating overtime is no different from a repudiation of the arbitration process itself." ***AFSCME Council 4, Local 287 v. State Board of Labor Relations***, 49 Conn. App. 513, 519 (1998).

Finally, in ***Town of Killingly***, Decision No. 3526 (1997), the Labor Board was faced with a claim that approximately 85 union grievances were frivolous or were violative of prior settlement agreements or arbitration awards. Out of the 85 grievances, the Labor Board found only three to be violative of prior settlement agreements or arbitration awards. One grievance was found to be filed in repudiation of the contract. The Labor Board ordered these four grievances withdrawn.

We now turn to the ***Stratford*** case itself. In ***Town of Stratford***, the Connecticut Supreme Court held, for the first time, that arbitrators are not required to give collateral estoppel effect to prior arbitration awards, even when two or more grievances are filed regarding the exact same contract provision, unless the contract itself mandates such a result. The case arose when two grievances were filed on the same day, both alleging that the Town had violated Article XXII of the collective bargaining agreement with regard to certain promotional procedures involving non-bargaining unit positions. One grievance was deemed non-arbitrable by an arbitration panel which concluded that promotions to positions outside of the bargaining unit were not covered by Article XXII. Thereafter, a second arbitration panel determined that the second grievance was covered by Article XXII and was therefore arbitrable; a third panel later issued an award on the merits of the second grievance. The Town moved to vacate this award, claiming that the doctrine of collateral estoppel should have precluded a subsequent arbitration panel from reaching a different conclusion on the same contract provision.

The Supreme Court disagreed, phrasing the issue as "a conflict between two competing policy considerations: (1) the desire to promote stability and finality of judgments, and the closely related interest of judicial economy; and (2) the desire to maintain the flexibility of the arbitral process." ***Town of Stratford***, *supra* at 117. In the Court's opinion, the latter consideration weighed more heavily. The Court stated:

> By including an arbitration clause in their contract, the parties bargain for a decision maker that is not constrained by formalistic rules governing courtroom proceedings and dictating judicial results. Rather, the arbitrator is governed by the terms of the parties' contract – in this case, the collective bargaining agreement. It is also this agreement that sets limits on the arbitrator's authority. In negotiating the agreement, the parties are free to bargain for whatever terms they choose, including a provision establishing a system of arbitral precedent. If,

> however, the parties elect not to include such a provision, or if one party's attempts to negotiate for the inclusion of such a provision are unsuccessful, arbitrators are free to attach to prior awards whatever precedential value they deem appropriate. Put simply, the parties bargain for the arbitrator's independent judgment and sense of justice, unfettered by the opinions of other arbitrators.

Town of Stratford, *supra* at 121. The Court further found that "[a]llowing arbitrators the flexibility to follow arbitral precedent where they deem appropriate, but disregard it when they conclude otherwise, creates an informal system of checks and balances in the arbitral process and thus helps to ensure that arbitration proceedings result in just dispositions." ***Town of Stratford***, *supra* at 124.

The public policy favoring arbitral discretion overrides even the potential for numerous repeated grievances on the same subject and its negative impact on the public fisc. The Court stated:

> We recognize the town's argument that the public policy favoring application of the [collateral estoppel] doctrine carries particular force in public sector arbitration because the cost of multiple grievances to resolve inconsistent awards might be borne, ultimately, by the taxpaying public. Nevertheless, in light of the strong public policy favoring arbitration as an alternative method of dispute resolution, and our desire to maintain the flexibility of the process and to remain true to its contractual nature, we conclude that the public policy favoring application of the doctrine of collateral estoppel must yield.

Town of Stratford, *supra* at 127-28 (internal citation omitted).

In so holding, the Court rejected the Town's arguments that the contract itself mandated that the subsequent arbitration panel was bound by the earlier determination that Article XXII did not apply to non-bargaining unit promotions. First, the Town asserted that where the parties have contractually agreed that arbitration awards would be "final and binding," subsequent arbitrators are bound by earlier interpretations of the same contract provision. The Court disagreed, because "it is within the province of the arbitrator to interpret every provision in the agreement before him or her, including the meaning to be ascribed to the phrase 'final and binding.'" ***Town of Stratford***, *supra* at 123.

The Court also rejected the Town's argument that the contract interpretation contained in an arbitration award becomes part of the collective bargaining agreement between the parties, thereby precluding future arbitrators from interpreting the same contract provision differently. The Court held that "an arbitrator's decision does not become a binding part of the parties' agreement unless the parties have included a provision in their agreement mandating such a result." ***Town of Stratford***, *supra* at 131.

Finally, we note one other opinion that has indirect bearing on our resolution of this case. After the briefs on the Motion to Dismiss in this case were filed, the

Connecticut Supreme Court issued ***Hartford Municipal Employees' Association v. City of Hartford***, 259 Conn. 251 (2002). In that case, the Court considered the Labor Board's authority to enforce grievance settlement agreements and arbitration awards pursuant to § 7-470(a)(6) of the Act.[6] Specifically, a Step 2 grievance decision regarding flex time was not appealed by either party, each of which believed it had obtained a partial "win." One year later, the City disciplined an employee for misuse of flex time, relying on its interpretation of the grievance settlement agreement which was contrary to the Union's interpretation. The Union filed a prohibited practice complaint, alleging that the discipline constituted a failure to comply with a grievance settlement agreement. The Labor Board interpreted the grievance decision in the Union's favor, and issued an order against the City, which appealed.

On appeal, the Superior Court ruled that an unappealed step grievance decision did not fall within the term "grievance settlement" in § 7-470(a)(6). The court further held that grievance settlements could never have application to future circumstances, regardless of language contained in the settlement indicating that the parties intended to resolve the issue of contract interpretation both for the situation giving rise to the grievance as well as for future situations arising under the same contract provision.

The Supreme Court reversed, and confirmed the Labor Board's longstanding interpretation of § 7-470(a)(6) as applying to unappealed step grievance decisions. With regard to the second issue, the Court affirmed the Labor Board's role in interpreting grievance settlements and determining that the terms of a grievance settlement could apply to future situations arising under the same contract provision if that is what the parties intended:

> By giving effect to the parties' agreement, the board plays an important role in ensuring the stability of management and labor relations. That role can best be understood by reflecting on how the grievance process would be impacted if settlements were per se limited to the parties to the dispute. We first note that, for all intents and purposes, the "parties" to a dispute are always the same – the employer and the union. Consequently, the employer and the union would be forced to revisit the same issue of contract interpretation time and time again, regardless of their intentions to the contrary. Moreover, an employer could make conflicting contract interpretations in subsequent settlements. See *Stratford v. International Assn. of Firefighters, AFL-CIO, Local 998*, 248 Conn. 108, 728 A. 2d 1063 (1999) (arbitrators may make different interpretations of contract provision since they are not bound by collateral estoppel). Not only would this result exacerbate labor and management relations, but it would also run contrary to the statute's purpose of creating a more efficient means to resolve grievances. See *Vaca v. Sipes*, supra, 386 U.S. 191.

Hartford Municipal Employees Association, *supra* at 277. The Court concluded that "it is an unfair practice to fail to comply with a grievance settlement with respect to subsequent disputes arising from the same contract provision when the parties to the

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[6] The comparable provision applicable to unions is Conn. Gen. Stat. § 7-470(b)(4).

settlement clearly had expressed an intention in the settlement that it have future application." ***Hartford Municipal Employees Association***, *supra* at 280.

Analysis

Against this legal background, we now turn to our analysis of the question presented. As the foregoing discussion of our case law reveals, the Labor Board has never held that repeated filing of the same or similar grievances is a *per se* prohibited practice. Such a holding would fly in the face of our commitment to upholding the grievance arbitration process as a cornerstone of collective bargaining. However, we have been willing in the past to consider claims that under certain limited circumstances, the filing of one or more grievances may indicate a failure to bargain in good faith as required by the Act or as a failure to comply with an arbitration award or settlement agreement. And we have, on three previous occasions, found that filing certain grievances violated either § 7-470(b)(2) or (b)(4) of the Act. ***IAFF Local 944***, *supra*; ***New Haven Board of Education***, *supra*; ***Town of Killingly***, *supra*. *See also* ***City of Norwalk***, Decision No. 3537 (1997) (filing grievance to arbitration repudiated the contract where contract clearly precluded the filing). We must now determine whether these avenues are completely foreclosed as a result of the Court's decision in ***Stratford***, as asserted by the Union.

We first consider whether a bad faith bargaining allegation may still be maintained under a "totality of the circumstances" theory in situations involving repeated grievance filings on the same issue. In these types of cases, we continue to adhere to the reasoning in ***Bristol Federation of Teachers*** and ***Ansonia Federation of Teachers***, *supra*, in that we will look for a preponderance of the evidence to show subjective bad faith on the part of the respondent when a complainant alleges that grievances are being filed in violation of the Act. In this regard, we do not find that the ***Stratford*** decision affects our ability and obligation under any of the Acts within our jurisdiction to police the overall conduct of the parties within the collective bargaining relationship and to find, in appropriate circumstances, that a party has abused its privileges or failed to meet its collective bargaining obligations. In certain circumstances, for example those set forth in the ***Bristol*** decision, we may find that a party's use of the grievance procedure contradicts its obligations. Therefore, such claims are not entirely foreclosed by ***Stratford*** and will be analyzed using all relevant law, including the principles discussed in ***Stratford***.

We believe the more difficult questions are raised by the cases alleging contract repudiation and failure to abide by an arbitration award. We first take up ***Stratford's*** impact on claims that the filing of repeated grievances on the same issue constitutes contract repudiation.

In order to prove a *prima facie* case of contract repudiation, a complainant must show that the respondent has taken action that contradicts clear and unambiguous contract language.[7] The Court in ***Stratford*** made clear that the terms of an arbitration

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[7] "It is well settled that this Board has found only three ways in which repudiation of a contract can occur. The first is where the respondent party has taken an action based upon an interpretation of the

award do not become a part of the contract itself unless the contract contains a provision mandating that result. 248 Conn. at 131. Consequently, in this context, we find that a claim of contract repudiation based on an interpretation of the contract contained in an arbitration award can no longer be maintained in light of ***Stratford***, absent the necessary contract provision mandating that such an interpretation is automatically incorporated therein. Further, even in cases in which the contract contains such a provision, we must be informed by the reasoning of the Supreme Court in assessing whether repudiation has occurred by the filing of a subsequent grievance. In this regard, we must remember that the ***Stratford*** decision makes clear that public policy supports the checks and balances provided by multiple interpretations of contract provisions. Thus, while we do not rule out the possibility of a finding of repudiation in a case in which an arbitrator's decision is expressly incorporated into the contract, we also remind the parties of our strict standard of analysis in repudiation cases; a standard made more meaningful by the Court's decision in ***Stratford***.

Next we consider whether the filing of grievances on an issue of contract interpretation previously resolved by an arbitration award can ever be deemed a failure to comply with that award under §§ 7-470(a)(6) or (b)(4) of the MERA. At the outset we note that the ***Stratford*** decision dealt solely with the arbitration process and is devoid of reference to our statutory authority to remedy proven violations of § 7-470(b)(4) of the Act. The Court's decision in ***Hartford Municipal Employees Association***, *supra*, affirmed the Labor Board's authority to police parties' compliance with the grievance arbitration process. The ***Stratford*** case was specifically raised before the Court in the ***Hartford Municipal Employees Association*** case (259 Conn. at 277), so the Court was aware of the necessity to reconcile conflicts between the two decisions to the extent that it felt there were any. The Court's failure in ***Hartford Municipal Employees Association*** to devote more than a passing reference to the ***Stratford*** decision implies that the Court did not view ***Stratford*** as interfering with the Labor Board's authority to require parties to abide by grievance settlements and arbitration awards pursuant to § 7-470(a)(6) and (b)(4).

The majority of our cases under this provision of the Act involve complaints filed by unions against employers. This is because the bulk of arbitration awards require action or inaction on the employer's part (e.g., reimbursement, reinstatement, deductions etc). Rarely does an award impose an affirmative obligation upon the union or its membership. Indeed, typically one of the only ways a union can fail to comply with an arbitration award is by refusing to accept it. The most direct way a union can show that it has refused to accept an award is by filing another grievance to challenge the same contract provision. Now, however, the Connecticut Supreme Court has said that it is appropriate for an arbitrator to hear and decide a grievance arising out of the same

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contract and that interpretation is asserted in subjective bad faith by the respondent party. The second is where the respondent party has taken an action based upon an interpretation of the contract and that interpretation is wholly frivolous or implausible. The third type of repudiation of contract does not involve assertion of an interpretation of the contract by the respondent, but instead, the respondent either admits or does not challenge the complainant's interpretation of the contract and seeks to defend its action on some collateral ground which does not rest upon an interpretation of the contract, e.g., financial hardship, administrative difficulties, etc." ***Town of Westport***, Decision No. 3832 (2001) (internal cites omitted).

contract provision previously interpreted in an arbitration award. We must therefore decide whether there is a conflict between our interpretation of our jurisdiction and authority under §§ 7-470(a)(6) and (b)(4) of the Act, and the Court's pronouncements in ***Stratford***.

As affirmed by the Connecticut Supreme Court, the Labor Board has the power to interpret grievance settlements and arbitration awards pursuant to its enforcement authority as embodied in § 7-470(a)(6) and (b)(4) of the Act. ***Hartford Municipal Employees Association***, 259 Conn. at 275. The Labor Board applies an objective test when making these interpretations:

> When a party charges that there has been a refusal to comply with a grievance settlement or arbitration award, we will interpret the settlement or award to ascertain what it requires and then determine whether the respondent has complied with those requirements. This is an objective standard, and we will find no defense in the assertion that the respondent's action is based on a good faith or plausible interpretation of the settlement.

Town of Stratford, Decision No. 3277 (1995). This objective standard stands in contrast to the "subjective bad faith" analysis used in ***Bristol Federation of Teachers*** and ***Ansonia Federation of Teachers***, *supra.*

Some arbitration awards apply by their own terms only to particular employees or particular circumstances, especially those involving employee discipline or discharge.[8] When an arbitration award is so limited, an employer would not violate § 7-470(a)(6) when it fails to apply the award to other employees or circumstances. Likewise, a union would not violate § 7-470(b)(4) by filing another grievance on behalf of another employee under the same contract provision, unless of course the second grievance was merely a refiling of the first grievance. Even the Union here concedes that it would have violated the Act if it had filed a second grievance to again challenge the calculation of DePoto's pension.

A different scenario exists where the arbitration award itself indicates that it is intended to have future application, i.e. precedential value. For example, in ***City of Bridgeport***, Decision No. 2148 (1982), the award in question provided in relevant part

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[8] *See e.g.*, ***City of Willimantic (Police)***, Decision No. 1795 (1979) (reinstatement); ***Town of East Hartford***, Decision No. 3571 (1998) (reinstatement); ***City of Bridgeport***, Decision No. 3628 (1998) (position elimination); ***City of Middletown***, Decision No. 3649 (1998) (reinstatement); ***Town of Wallingford***, Decision No. 3807 (2001) (schedule change); ***City of New Haven***, Decision No. 3081 (1993) (sick leave); ***Town of Newington***, Decision No. 2957 (1991) (shift assignment); ***City of Bridgeport***, Decision No. 3395 (1996) (wage overpayment); ***Town of Winchester***, Decision No. 3430 (1996) (promotion). *See also*, ***State of Connecticut (DAS)***, Decision No. 2152 (1982) (where grievance is not class action and award directs employer to take action with respect to only one employee, failure to comply with award as to other employees did not violate the Act); ***Town of Winchester***, Decision No. 3430 (1996) (award required demotion of one employee and promotion of another, which was complied with; future promotion of demoted employee did not violate the same award).

that "[t]he Superintendent shall forthwith cease and desist from requiring or permitting patrolmen to perform the duties of the class of detective..." After the award was issued, the Superintendent assigned four patrol officers as detectives on an emergency basis for five days. The Union alleged that this assignment violated the arbitration award. The Labor Board disagreed, finding it "clear that the arbitration award, when read as a whole and considered in light of the actual facts and issues presented to the arbitration panel, does not reach the subject of the five day emergency appointments..."

In ***Bridgeport***, *supra*, the Labor Board analyzed the extent to which the arbitration award applied to future circumstances, i.e. whether the award is binding precedent for future cases arising under the same contract provision. The Court in ***Stratford***, *supra*, made clear that making this determination rests with the arbitrator(s) in each case:

> In negotiating the agreement, the parties are free to bargain for whatever terms they choose, including a provision establishing a system of arbitral precedent. If, however, the parties elect not to include such a provision, or if one party's attempts to negotiate for the inclusion of such a provision are unsuccessful, arbitrators are free to attach to prior awards whatever precedential value they deem appropriate.

248 Conn. at 121. Since it is up to the arbitrators to determine in future cases whether a prior award has precedential value, ***Stratford*** necessarily limits the Labor Board's ability, in the context of resolving a § 7-470(b)(4) claim involving arbitration awards, to conclude that an award has precedential effect.[9] That does not mean, however, that the Labor Board's jurisdiction to adjudicate these complaints is removed. Rather, we conclude that ***Stratford*** affects only the Labor Board's ability to find, in the context of objectively interpreting an award, that it has precedential effect. The Labor Board is still obligated to determine if the award has been violated in some other way or as discussed previously if the totality of the circumstances shows a failure to bargain in good faith.

Based on the above discussion, we deny the Union's Motion to Dismiss this complaint. The Union's assertion is that the Employer cannot maintain this type of claim in light of ***Stratford***. We have made it clear that not all claims of this type are automatically precluded by the ***Stratford*** ruling and as such, this complaint survives a Motion to Dismiss on that ground. We do not make any pronouncement herein regarding the merits of the claim as it will be finally analyzed using the guidance of the ***Stratford*** decision.

We do not know if the parties have additional evidence to present in this matter, beyond what has been supplied to date in conjunction with this Motion. The parties will have an opportunity to present additional evidence and testimony on the merits of the Town's complaint, consistent with our discussion herein. However, if the parties are satisfied that the record is sufficient, as it stands, for a decision on the merits of this complaint, they should so inform the Labor Board.

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[9] The Labor Board still retains the ability to make these determinations with regard to grievance and arbitration settlements, where the parties participate in crafting the language.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal Employees Relations Act, it is hereby **ORDERED** that the Motion to Dismiss filed by the Union in the above-captioned matter is **DENIED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John W. Moore, Jr.
John W. Moore, Jr.
Chairman

Wendella A. Battey
Wendella A. Battey
Board Member

Patricia V. Low
Patricia V. Low
Board Member

CERTIFICATION

This is to certify that the foregoing was mailed postage prepaid this 8th day of January, 2003 to the following:

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