

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
AMALGAMATED TRANSIT UNION

-AND-

JANUARY 24, 2006

ADAM K. EASTMAN

Case Nos. MUPP-24,662; MUPP-24,759; MUPP-25,142

A P P E A R A N C E S:

Attorney Martin P. Hogan
For the Union

Adam K. Eastman
Pro Se

RULINGS ON MOTIONS TO DISMISS OR FOR SUMMARY DISPOSITION

On April 21, 2004 Adam K. Eastman (Eastman or Complainant) filed a complaint (Case No. MUPP-24,662) with the Connecticut State Board of Labor Relations (the Labor Board), amended on February 24, 2005, alleging that the Amalgamated Transit Union, Local 1336 (the Union) had violated the Municipal Employee Relations Act (MERA or the Act) by attempting to enforce payroll deduction of full union dues without authorization, failing and refusing to provide the Complainant with required financial information, and threatening and discriminating against the Complainant because he is a fee objector.

On June 8, 2004 the Complainant filed another complaint (Case No. MUPP-24,759) alleging that the Union violated the Act by insisting on fee payment without disclosing required financial information and with the unlawful threat of arbitration.

On January 21, 2005 the Complainant filed another complaint (Case No. MUPP-25,142) alleging that the Union offered an illegal settlement for Case Nos. MUPP-24,662 and MUPP-24,759 based on an inadequate methodology for computing fees.

On February 8, 2005 the Complainant filed another complaint (Case No. MUPP-25,223) alleging that the Union and/or its legal representative continue to violate the Act by actions concerning the Complainant's obligation to pay fees. That complaint was withdrawn on February 17, 2005.¹

After the requisite preliminary steps had been taken, the above-captioned cases were scheduled for a formal hearing before the Labor Board on March 2, 2005. On February 22, 2005 and prior to the amendment of Case No. MUPP-24,662, the Union filed a Motion to Dismiss or for Summary Disposition seeking dismissal of all three complaints on the grounds that the Union had revised its method for determining fair share fee amounts and had abandoned its demand that the employer, Milford Transit District, discipline the Complainant for failure to tender the fees in years prior to 2005. Additionally, the Union argued that the Complainant had not filed a timely objection to the fair share fee for calendar 2005. As such, the Union argued that no basis exists for the complaints and each should be dismissed.

On February 24, 2005 the Complainant filed a response to the Union's motion arguing that the Union's previous demands for discipline were egregious violations of the law and should be heard by the Labor Board. Further the Complainant argues that the Union's current fair share procedure continues to be a violation of the law accompanied by renewed threats of discipline for failure to tender the fees.

On March 2, 2005 the Union filed another Motion to Dismiss or for Summary Disposition, applying its previous arguments to the amendment in Case No. MUPP-24,662 filed by the Complainant on February 24, 2005.

On March 2, 2005 the parties appeared before the Labor Board for a hearing. On that date, the parties were given opportunity to present argument concerning the Motions to Dismiss and to present evidence on the merits of the complaints. At the hearing, the parties agreed and the Labor Board ordered that the evidentiary record would be closed on that date and that the parties would first submit briefs on the Union's motions. The parties further agreed and the Labor Board ordered that, if the motions were denied, the parties would have the opportunity to submit briefs on the merits of the complaints. Both parties then submitted post-hearing briefs regarding the Union's motions, the last of which was received by the Labor Board on April 6, 2005.

¹ During the pendency of Case No. MUPP-25,223 the Union filed a Motion to Dismiss or to Investigate as an Independent Matter. That document is included in the record of the instant proceedings within Exhibit 8.

DISCUSSION

The Union's motions are based on its assertion that (1) the Complainant's allegations are moot because the Union has dropped all requests for past fees and or discipline against the Complainant for failure to tender those fees; and (2) the Complainant has not filed an objection to the Union's 2005 assessment of fees and as such, cannot maintain a claim against the Union for actions it may take regarding the current or future fee requirements.

The Complainant objects to dismissal on the grounds that the Union's withdrawal of its demand for past fees and/or for the Complainant's discipline or termination does not render the allegations moot. The Complainant maintains that the Union has never remedied its failure to provide the Complainant with relevant information and that its actions in pursuing discipline of the Complainant cannot be unilaterally remedied by the Union's decision to abandon its position concerning past fees. The Complainant further argues that the Union's current fee assessment continues to be an illegal procedure based on inadequate information and that he has never had a meaningful opportunity to register an objection due to the lack of relevant information.

Based on the record as we view it for purposes of the Motions to Dismiss, we find that these matters should be decided on the merits. First, we find that the allegations concerning past fees are not rendered moot by the Union's subsequent actions. The Complainant alleges that the Union did not provide an adequate procedure for those years, resulting in the need for him to defend against an illegal disciplinary action. Even if the Union has abandoned its pursuit of disciplinary action and or fee assessment against the Complainant and revised its procedures, the issue remains whether the Union violated its duty during the past years regarding its practices and procedures for fee payers. The language of MERA "fairly implies that the Board is empowered and perhaps expected to rule on a complaint even though the alleged illegal conduct is no longer occurring." *City of Hartford*, Decision No. 2463 (1986). Further, as the Supreme Court stated in *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 106 S. Ct. 1066 (1986), "the voluntary cessation of allegedly illegal conduct does not moot a case." Further, even if the Labor Board did not order a monetary remedy upon a finding of a violation, there remains available the standard order to cease and desist from any illegal conduct and the posting of the Labor Board's decision, a remedy that this Board has always found to be effective and necessary.

With regard to the 2005 fee procedure, the Union argues that its fair share calculations are legal and that the Complainant failed to file a timely objection, barring him from pursuing this complaint. Complainant asserts that he is not obligated to comply with the specific objection requirements of the Union's revised procedure because the procedure continues to be fatally flawed. We will not dismiss this portion of the Complainant's case on a motion to dismiss. First, while the Complainant has admittedly not followed the specific objection procedures in the Union's revised methodology, there can be no doubt that he informed the Union of his objection if by no other means than the filing of the complaint in Case No. MUPP-25,142 on January 21, 2005 attacking the

validity of the new methodology. Further, the Complainant asserts that he is not required to submit to the arbitration procedure developed by the Union. See *Airline Pilots Assn. v. Miller*, 523 U.S. 866 (1998). Under the circumstances, we find that the issues regarding the 2005 events should also be determined on the merits.

ORDER

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Municipal Employees Relation Act, it is hereby

ORDERED that the Motions to Dismiss or For Summary Disposition filed by the Union in the above-captioned cases be, and the same hereby are, **DENIED**. The parties will have 30 days from the date of this decision to file briefs on the merits of the above-captioned cases.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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

Patricia V. Low
Patricia V. Low
Board Member

Thomas C. Watson
Thomas C. Watson
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 24th day of January, 2006 to the following:

Adam K. Eastman

Pro Se

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Guilford, CT 06437

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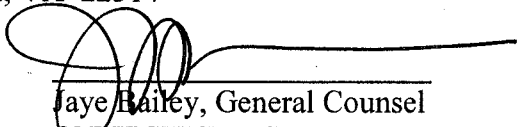
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Jaye Bailey, General Counsel

CONNECTICUT STATE BOARD OF LABOR RELATIONS