STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
STATE OF CONNECTICUT,
JUDICIAL DEPARTMENT

-AND-

AUGUST 4, 2004

LOCAL 749, COUNCIL 4,
AFSCME, AFL-CIO

Case No. SPP-19,994

APPEARANCES:

Attorney Richard D. O'Connor
For the State

Attorney J. William Gagne, Jr.
For the Union

DENIAL OF MOTION TO DISMISS

On May 7, 1998, Local 749, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), amended on October 30, 2003, alleging that the State of Connecticut, Judicial Department (the State) violated the State Employees Relations Act (SERA or the Act) by retaliating against bargaining unit member Fran Ayers because Ms. Ayers had filed a grievance regarding working conditions. For remedy, the Union seeks the following: (1) a cease and desist order; (2) payment to Ms. Ayers for all lost time due to the alleged retaliation; (3) reimbursement of all attorney's fees, medical costs, transportation costs, and any child care costs; (4) reimbursement of all the Union's costs and expenses incurred in the Labor Board proceedings including but not limited to counsel fees, salaries, witness fees, travel expenses, and other reasonable costs and expenses.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on August 23, 2000. At that hearing, the Union requested that the case be continued due to the pendency of a federal court lawsuit involving "many of the same factual allegations that exist" in this case. The Union requested that, once the

federal lawsuit was resolved, the Union would request the Labor Board to reschedule a hearing on any issues left unresolved by the federal case. The request was granted.

On October 30, 2003, the parties appeared before the Labor Board. On that date, the State filed a Motion to Dismiss. The hearing was postponed to allow the Union time to respond to the Motion. On December 3, 2003, the Union filed a Response to the Motion to Dismiss. On December 8, 2003, the State filed a Reply to the Union's Response.

On December 9, 2003, the parties again appeared before the Labor Board for the purpose of presenting argument regarding the Motion to Dismiss. Both parties appeared, were represented and allowed to make argument. Both parties were allowed to respond to questions from the Labor Board concerning the Motion to Dismiss. Based on all the submissions of the parties, we deny the Motion to Dismiss.

The documents and argument submitted by the parties establish the following. In May, 1999, Ms. Ayers filed a federal lawsuit alleging violations by the State of Title VII of the Civil Rights Act of 1964, 42 USC §§2000e, *et seq.*, Section 1983 of Title 42 of the United States Code and Section 46a-60 of the Connecticut General Statutes. (Ex. 6). In her complaint, Ms. Ayers alleged that she had been the victim of repeated sexual harassment by co-worker Stanley Kubovy and that the State had reacted with hostility and/or a lack of action to her report of the harassment. Ms. Ayers also alleged that she filed two grievances concerning the State's failure to address her complaint to which the State reacted with hostility and discrimination. Ms. Ayers was represented in the lawsuit by private counsel; the State was represented by the office of the Attorney General. The Union was not a party to the federal lawsuit and the documents do not indicate that the State or Ms. Ayers ever attempted to bring the Union into the lawsuit.

On or about October 29, 2002, the State made an Offer of Judgment in the federal action in the amount of $30,000 which amount included "accrued costs and attorney's fees". The Offer further stated "This offer of judgment is made for the purposes specified in Rule 68, and is not construed either as an admission that the defendant is liable in this action or that the plaintiff has suffered any damages." (Ex. 7). On or about November 5, 2002, Ms. Ayers accepted the State's Offer of Judgment. On November 7, 2002, Judgment was entered in favor of Ms. Ayers against the State in the amount of $30,000 pursuant to Rule 68 of the Federal Rules of Civil Procedure. (Ex. 9).[1]

In its Motion to Dismiss and supporting memorandum, the State argues that the instant prohibited practice complaint should be dismissed based on the doctrine of *res judicata*. Specifically, the State argues that the judgment entered in federal court was a

[1] Rule 68 of the Federal Rules of Civil Procedure states in part: "At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment...."

final adjudication on the merits of the claims raised and that this prohibited practice complaint raises the same claims. Further, the State argues that Ms. Ayers and the Union should be treated as the same party for purposes of *res judicata* because the Union acts in her behalf as the statutory agent. ***Corey v. Avco-Lycoming Division***, 163 Conn. 309 (1972). Finally, the State argues that this complaint involves issues that were or could have been raised in the federal action because the claims arise out of the same employment relationship and constitute the same subject matter.

The Union objects to the dismissal of the complaint, arguing first that the Offer of Judgment and the Acceptance in federal court created a contract and not a ruling on the facts or merits of the case. The Union also claims that Ms. Ayers and the Union are separate "plaintiffs" with separate causes of action and, as such, Ms. Ayers' acceptance of the offer in federal court does not preclude the Union from pursuing its statutory claims before the Labor Board. We find that this prohibited practice complaint is not barred by the doctrine of *res judicata* for the following reasons.

The first question presented is whether the Judgment in federal court is a determination on the merits for purposes of the *res judicata* analysis. We find that it is. We have reviewed the cases submitted by the Union regarding this claim. We understand the Union's argument concerning the contractual aspects of this transaction but we find that analysis is misplaced here. This is not a case in which the tribunal must decide if a particular action was required or an obligation was fulfilled pursuant to the judgment. Instead the question before us is whether the Judgment can have preclusive effect and if so, whether the doctrine of *res judicata* prevents this particular prohibited practice complaint from proceeding. We find that a judgment resulting from an Offer such as the one in the federal court matter can have preclusive effect in appropriate circumstances and therefore, is not merely a contract between the two parties for the purposes of the question before us.

Turning to the issue of whether the Judgment precludes the Union from pursuing this case, we find that it does not. The Connecticut Supreme Court has stated:

> The doctrine of res judicata is one of rest and is enforced on the ground of public policy. ... A final judgment on the merits is conclusive on the parties in an action and their privies as to the cause of action involved. If the same cause of action is again sued on, the judgment is conclusive with respect to any claims relating to the cause of action, which were actually made or might have been made.
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> ***Corey v. Avco-Lycoming Division, AVCO Corporation,*** *supra* at 316-317 (1972)(internal citations omitted).

This statement of the doctrine is consistent with the federal decisions cited by the State in support of its motion in this case. See ***Myslow v. Avery***, 2003 WL 21356407 (D.Conn., 2003); ***Monahan v. New York City Department of Correction***, 214 F.3d 275, 284-285 (2d Cir. 2000). In ***Monahan,*** *supra,* the Circuit Court stated that *res judicata* applies

where "(1) the previous action involved an adjudication on the merits; (2) the previous action involved the plaintiffs or those in privity with them; (3) the claims asserted in the subsequent action were, or could have been, raised in the prior action." *Id.*

The Connecticut Court has spoken further on the preclusion doctrines. In ***Cumberland Farms,*** 262 Conn. 45 (2002), the Court stated:

> The applicability of the doctrine of collateral estoppel, like the applicability of the closely related doctrine of res judicata is a question of law....Application of the doctrine of collateral estoppel is neither statutorily nor constitutionally mandated. The doctrine, rather is a judicially created rule of reason that is 'enforced on public policy ground'. ***Stratford v. International Association of Firefighters,*** 248 Conn. 108, 127, 728 A.2d 1063 (1999). Accordingly, as we have observed in regard to the doctrine of res judicata, the decision whether to apply the doctrine of collateral estoppel in any particular case 'should be made based upon consideration of the doctrine's underlying policies, namely, the interests of the defendant and of the courts in bringing litigation to a close...and the competing interest of the plaintiff in the vindication of a just claim....These [underlying] purposes are generally identified as being (1) to promote judicial economy by minimizing repetitive litigation; (2) to prevent inconsistent judgments which undermine the integrity of the judicial system; and (3) to provide repose by preventing a person from being harassed by vexatious litigation....'***Isaac v. Truck Service, Inc.,*** 253 Conn. 416, 422-23, 752 A.2d 509 (2000).

The Court then went on to cite examples of cases in which it has recognized exceptions to the general policy favoring application of the preclusion doctrines. See ***Isaac v. Truck Service, Inc,*** *supra;* ***Stratford v. International Assn. Of Firefighters, ALF-CIO, Local 998,*** *supra;* ***State v. McDowell,*** 242 Conn. 648 (1997); ***Connecticut Natural Gas Corp. v. Miller,*** *239 Conn. 313 (1996);* ***Delahunty v. Massachusetts Mutual Life Ins. Co.,*** 236 Conn. 582 (1996); ***Genovese v. Gallo Wine Merchants, Inc.,*** 226 Conn. 475 (1993).

The Court stated:

> In establishing exceptions to the general application of the preclusion doctrines, we have identified several factors to consider including:1) whether another public policy interest outweighs the interest of finality served by the preclusion doctrines; (2) whether the incentive to litigate a claim or issue differs as between the two forums; (3) whether the opportunity to litigate a claim or issue differs as between two forums; and (4) whether the legislature has evinced an intent that the doctrine should not apply.
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> ***Cumberland Farms,*** *supra* at 61.

Against this backdrop, we make our decision in this matter.

First, we do not know whether the District Court would have heard this claim, even had it been presented as part of the federal matter. In this regard, the Labor Board is the entity charged with initial determinations concerning statutory violations of the public sector labor relations statutes in this state. Although individuals are allowed to file and pursue complaints under SERA, in this case the Union brought the SERA complaint while Ms. Ayers pursued the federal court matter. The Union was not made a party to that action and Ms. Ayers apparently did not have an incentive to or an interest in pursuing the SERA claim in court, even had she been able. Thus, even if the judgment is adjudication on the merits and even if Ms. Ayers and the Union may be found to be privies, we do not believe it is clear that the District Court would have taken jurisdiction of this claim.

Even assuming, however, that the prohibited practice claims could have been raised and pursued in the federal forum, we do not believe the doctrine of *res judicata* is appropriate here. First, the public sector labor laws in Connecticut evince a very strong policy in favor of collective bargaining and specifically provide the Labor Board as the forum for unions and employers to challenge each other's actions in collective bargaining. In bringing a prohibited practice complaint, a union's interest may be different from that of any individual bargaining unit member. A union's overall objective may be and usually is, to maximize the rights and benefits of its membership as a whole, rather than to achieve a specific result for a specific individual. Here, there may be good reasons why the Union wishes to pursue the statutory SERA claim even in spite of Ms. Ayers' resolution of her individual federal claims. It is important for the Union to have the opportunity to litigate this matter as a way of enforcing its collective bargaining rights in the forum provided by statute. As such, public policy favors the right of the Union to continue with its claim before the Labor Board.

Further, the incentive and opportunity to litigate the Union's statutory claims differs between the two forums. As discussed above, the Union was not a party to the federal action and there are valid reasons for the Union to want to pursue a retaliation complaint before the Labor Board. At the same time, Ms. Ayers' interest in and motivation to pursue this statutory claim in federal court could be significantly different.

While the legislature has not expressly stated its intention in this kind of matter, the SERA clearly provides for the Labor Board as the forum for the investigation and adjudication of claims involving that statute. We find that allowing this complaint to go forward will not hamper judicial economy and that there is not danger of inconsistent judgments that would undermine the integrity of the judicial system. Further, this is not vexatious litigation designed to harass the State. We find that it is contrary to the purposes of the Act to apply the doctrine of *res judicata* in this proceeding.[2] As such, the motion is denied.

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[2] In so deciding, we caution the parties that, even if we were to find a statutory violation in this matter, we would closely scrutinize the appropriate remedy in light of Ms. Ayer's previous receipt of a monetary judgment concerning these facts.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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Wendella A. Battey
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CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 4th day of August, 2004 to the following:

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