

STATE OF CONNECTICUT
CONNECTICUT LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

ANTHONY PARENTE AND
HAMDEN EDUCATION ASSOCIATION

-and-

AUGUST 16, 2002

VINCENT VIRGULTO

Case No. TUPP-22,263

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

Attorney Ronald Cordilico
For Anthony Parente and
Hamden Education Association

Attorney John Anthony Radziunas
For Vincent Virgulto

ARTICULATION OF REASONS FOR DENIAL OF MOTION TO DISMISS

On February 5, 2001, Vincent Virgulto, an individual (Virgulto or Complainant) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that Anthony Parente (Parente) and the Hamden Education Association (the Association) had violated § 10-153e(c) of the Teacher Negotiation Act (TNA or the Act) by breaching its duty of fair representation.¹

On February 27, 2002, the Respondents filed a Motion to Dismiss the complaint. Complainant objected to the Motion and the Motion was denied by the Labor Board on March 28, 2002. On April 5, 2002, Respondents filed a Motion for Articulation of the reasons for the Labor Board's denial of the Motion to Dismiss. Complainant did not file a response to the Motion for Articulation.

The Respondents' Motion for Articulation is granted and the following articulation is issued.

¹ Parente and the Association will also be referred to collectively as Respondents.

ARTICULATION

The Respondents' Motion to Dismiss rests on their argument that Complainant was retired at the time he filed the instant complaint with the Labor Board and, as such, the Association owed him no duty of fair representation. For support, the Respondents cite *Merck v. Jewel Companies, Inc.*, 848 F.2d 761 (1988); *Toth v. USX Corporation*, 693 F.Supp. 693 (1988); and *Zakulis v. Bethlehem Steel Corporation*, 1989 WL 11873 (W.D.N.Y.). In each of the cases cited by Respondents, the plaintiff was not an employee of the employer at the time of the Union's alleged breach of its duty of fair representation. As such, in each case, the court determined that the plaintiff could not maintain an action against the union for actions taken when the union had no obligation to represent the individual.

By contrast, in this case, the Complainant is alleging that the Union breached its duty of fair representation to him at a time when he was still an employee of the Board of Education. He has since retired but his complaint concerns events that took place while he was employed. As such, this case is not necessarily controlled by the cases cited by the Respondents.

Further, to our knowledge, this particular circumstance has not before arisen in our case law. As a case of first impression and with no clear controlling authority to support Respondents' motion, the motion must fail.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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CERTIFICATION

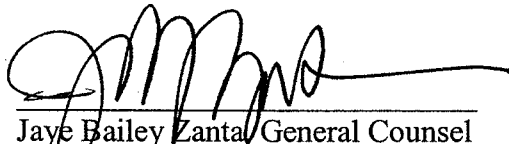
I hereby certify that a copy of the foregoing was mailed postage prepaid this 16th day of August, 2002 to the following:

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