STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

HARTFORD PUBLIC SCHOOLS

-AND-

MAY 1, 2012

THOMAS LATINA

-AND-

COUNCIL 4, AFSCME

Case No. MPP-28,975

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

Attorney Helen Apostolidis
for the Board of Education

Attorney J. William Gagne, Jr.
for the Union

Attorney William A. Conti
for the Complainant

RULING ON MOTIONS TO DISMISS

On December 28, 2010 Thomas Latina (Latina or Complainant) filed a complaint, amended on July 25, 2011, with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Hartford Board of Education (the School Board) had violated the Municipal Employee Relations Act (MERA or the Act) by repudiating its contractual obligations and that Council 4, AFSCME, AFL-CIO (the Union) had violated the Act by breaching its duty of fair representation.

On January 27, 2012 the School Board filed a motion to dismiss claiming that Latina had failed to allege a violation of the Act, that Latina had failed to properly allege repudiation, that Latina lacked standing to bring a repudiation claim, and that Latina

signed a "last chance agreement" releasing the School Board from any and all claims then existing. On March 12, 2012 the Union filed a similar motion to dismiss.

DISCUSSION

Background

For purposes of the motions to dismiss, we assume the following allegations of Latina's amended complaint to be true:[1]

> The Hartford Public Schools . . . engaged in a pattern of malicious behavior against the undersigned, including badgering and abusing the undersigned, which gave rise to the incident which was used as an excuse to fire the Complainant. In addition, the Hartford Public Schools repudiated its contractual obligations by using a Last Chance Agreement dated July 22, 2008, to prevent the Complainant from pursuing his rights to grieve his illegal dismissal . . .
>
> The Union failed to represent the undersigned in a grievance filed against the Hartford Public Schools for his illegal dismissal on December 13, 2010, violating their duty to fair representation; and that the Union showed animus towards the undersigned as a result of his personal inquiries previously made into changing union representation.

Discussion

The School Board initially claims that the Board has no jurisdiction over "simple issues of contract interpretation or discipline" and can only address wrongdoing which is a prohibited practice under the Act. In this case, however, Latina claims that but for the Union's breach of its duty of fair representation (DFR), the collective bargaining agreement would have been enforced and Latina reinstated to his former position. In short, this case is a "hybrid" breach of contract/DFR action recognized in ***Vaca v. Sipes***, 386 U.S. 171 (1967) and recently discussed in ***Piteau v. Hartford BOE***, 300 Conn. 667 (2011).

> Thus, "[s]uch [an action], as a formal matter, comprises two causes of action. The [action] against the employer rests on . . . a breach of the collective bargaining agreement. The [action] against the union is one for breach of the union's duty of fair representation. . . . Yet the two claims are

[1] "When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light . . . [A] court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) ***Filippi v. Sullivan,*** 273 Conn. 1, 8 (2005).

> inextricably interdependent. To prevail against either the company or the [u]nion . . . [employees] must [show] not only . . . that their discharge was contrary to the [agreement] but must also carry the burden of demonstrating breach of [the] duty [of fair representation] by the [u]nion . . .

Piteau v. Hartford BOE*, supra,* 300 Conn. at 676 n. 12 (quoting ***DelCostello v. Teamsters,*** 462 U.S. 151, 164-65 (1983)). ***Piteau v. Hartford BOE****, supra,* expressly held that the Labor Board may address simple breach of contract claims which are part of a hybrid case:

> [We] are aware of . . . [no authority stating] . . . that the board of labor relations may not exercise jurisdiction over a breach of contract claim when it is interdependent with a claim over which the board of labor relations does have jurisdiction. Indeed, we can perceive of no persuasive reason, why the board of labor relations would or should decline to exercise jurisdiction when the two claims are so inextricably linked that the plaintiff can prevail on one only by prevailing on the other.

Id. at p. 689.

Latina alleges that the School Board engaged in "malicious behavior . . . which gave rise to an incident which was used as an excuse to fire" him. Latina would naturally expect the Union to raise this conduct during grievance proceedings as a defense to his termination. Since Latina's claim against the School Board is intertwined with his claim that "[t]he Union failed to represent . . . [him] . . . in a grievance filed against" the School Board over the dismissal, the Labor Board has jurisdiction over Latina's claimed violation of the collective bargaining agreement and/or the last chance agreement.

The School Board also argues that Latina does not articulate a recognized repudiation claim and that he is without standing to do so because the School Board owes him no duty to bargain. "The Labor Board has found that repudiation of a collective bargaining agreement may occur . . . where the respondent has taken an action based upon an interpretation of the contract and that interpretation is asserted in subjective bad faith by the respondent . . ." ***City of Meriden***, Decision No. 4553 p. 7 (2011). Fairly read, the amended complaint alleges that the School Board *intentionally fabricated* an "incident which was used as an excuse to fire the Complainant." If true, this would constitute subjective bad faith within the scope of the test for repudiation and a potential defense to the discipline at issue. If, in fact, repudiation occurred, Latina would have standing to assert the Union's failure to challenge the repudiation as part of his claim against the Union.

Lastly, the School Board alleges that Latina signed a "last chance agreement" in 2008 in which he agreed to "release . . . all . . . claims . . . relating to his employment with HPS . . . which she [sic] may have as a result in any act which has occurred . . . up to and

including the date of her [sic] execution of this Agreement . . ."[2] The School Board argues that this release bars the instant case and that "Complainant agreed that he would not pursue any claims arising out of and/or in any way related to the last Chance Agreement."

Fairly read, Complainant's amended complaint concerns events which occurred *after* execution of the last chance agreement. In short, the release does not encompass future claims and as such, is not a bar to the instant case. Latina agreed to not "pursue any other grievances or any claims arising out of and/or in any way related *to the matters contained.*" Clearly those "matters" involved events and/or claims which occurred prior to the execution of the agreement. The School Board is free to defend its post-execution actions by arguing that such were authorized by the last chance agreement. This is different, however, from asserting that Latina's case is barred because in 2008 he released the School Board from all liability as to then non-existent future claims.

For the above noted reasons the School Board's motion to dismiss is not dispositive of this case. The Union's motion is largely identical and as such must also be denied.

ORDER

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

ORDERED that the Motions To Dismiss by the Union and the School Board in the above-captioned case, be, and the same hereby are, **DENIED.** The case will proceed to a hearing on the merits.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Patricia V. Low
Patricia V. Low
Chairman

Wendella Ault Battey
Wendella Ault Battey
Board Member

Kenneth Leech
Kenneth Leech
Alternate Board Member

[2] We assume, for purposes of addressing the motions to dismiss, that the language of the last chance agreement exists as alleged by the School Board.

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 1st day of May, 2012 to the following:

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CONNECTICUT STATE BOARD OF LABOR RELATIONS