On December 28, 2010, Thomas Latina (the Complainant) filed a complaint, amended on July 25, 2011, with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Hartford Public Schools (the School Board) violated the Municipal Employee Relations Act (MERA or the Act) by violating a settlement agreement and that Council 4, AFSCME had violated the Act by breaching its duty of fair representation.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on June 29, 2011, February 1, April 23 and June 14, 2012. All parties appeared, were represented by counsel and were given full opportunity to present evidence, examine and cross-examine witnesses, and make argument. The parties
submitted post-hearing briefs, the last of which was received on August 31, 2012. Based
on the entire record before us, we make the following findings of fact and conclusions of
law and dismiss the complaint.

FINDINGS OF FACT

1. The School Board is a municipal employer within the meaning of Section 7-467(1) of the Act.

2. The Union is an employee organization within the meaning of Section 7-467(6) of the Act.

3. The School Board and the Union are parties to a collective bargaining agreement (Ex. 8) with effective dates of July 1, 2002 through June 30, 2007 that contains the following relevant provisions:

ARTICLE XII – DISCIPLINARY PROCEDURES

12.0(A) Bargaining unit members shall not be . . . suspended without pay or discharged without just cause.

. . .

ARTICLE XVI – GRIEVANCE PROCEDURE

16.0(A) Definitions

The term “grievance” is defined as an alleged violation, misapplication, or misinterpretation of the specific provisions of this Agreement.

. . .

16.0(B) Procedure

Grievances shall be processed in the following manner:

. . .

Step 3: In the event that the grievance is not settled at Step 1 or Step 2, then the Union may seek arbitration of the grievance. . . The decision of the arbitrator(s) shall be final and binding upon both parties, except as otherwise provided by law.

. . .

16.0(C) General Provisions

. . .
4. Any grievance . . . not presented for disposition . . . within ten (10) work days of the time when either the Grievant or the Union knew . . . of the conditions giving rise to thereto, shall not thereafter be considered a grievance under this Agreement . . .

4. On December 6, 2004 the School Board hired Complainant as a heating, ventilation and air conditioning (HVAC) technician, a position in a bargaining unit represented by the Union.

5. On July 22, 2008, following an incident with a supervisor, the Complainant, the School Board and the Union entered into a “Last Chance Agreement” (last chance agreement or agreement) (Ex. 6B) which provides, in relevant part:

1. All Parties recognize and agree that Latina has had ongoing anger and volatility issues. He has been given repeated notice regarding the need to improve on his conduct and has failed to do so . . . Recently, he became volatile toward a supervisor raising his voice and [using profanities] . . . As a result of this . . . behavior, he was asked to leave work . . .

2. All Parties recognize and agree that the conduct described in Paragraph 1 is wholly unacceptable and inappropriate. All Parties further agree that the Board has just cause to terminate Latina’s employment.

3. In order to provide Latina one final opportunity to appear for work, conduct himself in an appropriate manner as an employee of the Board, the Board agrees to allow him one last chance for employment.

. . .

5. The Parties further acknowledge and agree that Latina’s future employment is conditioned on his agreement to follow Board and school policies and regulations and directives of his supervisors and to conduct himself in a professional and appropriate manner. . . If Latina is terminated . . . for unprofessional interpersonal conduct, Latina and Local 566 may not grieve the termination. Unprofessional interpersonal conduct includes, but is not limited to: expressions of anger in the workplace; use of profane, vulgar, or improper language; disrespectful interaction with a colleague or supervisor or other person in the workplace; use of loud voice (yelling) or disruptive behavior; threatening conduct or words, etc. The determination of whether alleged conduct occurred and is rightfully construed as unprofessional interpersonal conduct shall be in the sole discretion of the Administration, and shall not be subject to the grievance procedure.

. . .
10. Latina understands that he is subject to the terms and conditions of this Agreement and such Agreement shall be in effect from the time of the execution until the time he leaves the employ of the Board.

I Tom Latina understand that President of Local 566 Mark Blumenthal is signing this Agreement at my request and will not hold Local 566, AFSCME council 4 or Mark Blumenthal responsible if I am terminated for failure to comply with this Agreement.

6. The Complainant became dissatisfied with the Union after learning that comparable HVAC positions in other towns received higher wages. In or about September, 2009 the Complainant contacted Hubert Barnes, Business Manager of the Plumbers and Pipefitters Local 777 and David Lucas, Secretary-Treasurer of Teamsters Local 671, seeking a change in union representation. Barnes and Lucas each informed the Complainant that they could not represent his bargaining unit because he was already represented by another union. (Ex. 19, 20).

7. In the six months that followed September, 2009 the Complainant discussed the issue of seeking other representation with seven of his coworkers. Five were interested while two were not.

8. By written statement (Ex. 9) the Complainant’s supervisor, Scott Kanaitis (Kanaitis) reported a December 13, 2010 incident to School Board Chief Labor and Legal Services Officer Jill Cutler Hodgman (Cutler Hodgman) and to Union Vice President Richard Deschenes stating, in relevant part:

   At 7:00 a.m. [the Complainant] was witnessed by me… entering the office of [T. W.]. I noticed that [the Complainant] removed keys that belonged to [T. W.]. Concerned with this unusual activity, I approached [the Complainant] and asked what he needed. [The Complainant’s] response was, “Ya know, I’ve dealt with you yuppie a--holes before.” [The Complainant] proceeded to return tools to a secured storage room while questioning why he was always being questioned “as if he were a 7 year old.” [J. C.] and [A. J.] were present during this verbal exchange. [The Complainant] then proceeded to place the keys on [T. W.’s] desk. He then walked out of the office and approached me in the shop-area, in the presence of [A. J.] and said “[i]f you would like we can settle these differences between us outside of work one day.” I replied, “[i]s that a threat?” and [the Complainant] answered, “yes”.

9. The Complainant was upset by the incident and took three vacation days due to stress.
10. By letter (Ex. 10) to Complainant dated December 13, 2010, Cutler Hodgman directed the Complainant to attend a meeting on December 16, 2010 with School Board Director of Security Joseph Sikora (Sikora) and to provide Sikora with “a written signed statement providing your account and response to [Kanaitis’] allegations…”

11. By letter (Ex. 11) dated December 14, 2010 Cutler Hodgman wrote Complainant stating, in relevant part:

   . . . You told your Union that you would not appear for the meeting scheduled for Thursday, December 16, 2010, but instead delivered your statement regarding the allegations to your union representative. In that statement you wrote, “I attempted to explain my personal experience and opinion; comparing the present generation as opposed to what it was like in the 60’s 70’s & 80’s.”

   Based on the finding that you engaged in unprofessional conduct with a supervisor in direct violation of the last chance agreement you are hereby terminated from employment.

   . . .

12. The Union filed a grievance dated January 4, 2011 with Cutler Hodgman challenging the Complainant’s termination.

13. By letter (Ex. 12) to Union President Levey Kardulis dated January 7, 2010, Cutler Hodgman stated, in relevant part:

   We are in receipt of your grievance . . . [h]owever . . . the termination of [Complainant’s] employment was pursuant to a Last Chance Agreement which explicitly states that such determination is in the sole discretion of the Administration and shall not be subject to the grievance procedure. Therefore the grievance is not proper and will not be processed . . .

14. Union Vice President Rich Deschenes subsequently sent the Complainant a letter (Ex. 13) stating, in relevant part:

   This letter is to inform you that a grievance was filed on your behalf . . . [the School Board’s] . . . Human Relations Director . . . notified the Local that because of the Last Chance Agreement . . . the Board had no obligation to hear your grievance. I then contacted you and notified you of the same.

   . . . I was notified . . . that you signed papers for your retirement. You then filed a claim with the State Labor Board because you felt wrongly terminated and wanted your job back. I am enclosing a copy of the Grievance that was filed and a copy of the letter that the Board sent me regarding your case. In light of the above facts the executive board of the Local has voted to not pursue any further claims on your behalf . . .
CONCLUSIONS OF LAW

1. The School Board did not breach the last chance agreement when it terminated the Complainant’s employment on or about December 14, 2010.

2. The Union did not breach its duty of fair representation by declining to pursue the Complainant’s grievance beyond the first step of the contractual grievance procedure.

DISCUSSION

The Complainant contends that the School Board violated the last chance agreement by engaging in a pattern of malicious behavior which gave rise to the incident of December 13, 2010 and orchestrated the Complainant’s dismissal. The Complainant further alleges that because he had inquired about changing union representation, the Union retaliated by declining to pursue a grievance challenging the dismissal and thereby breached its duty of fair representation.

The School Board responds that it acted well within the scope of the last chance agreement and, in any event, jurisdiction is lacking because a contract breach is not a prohibited practice under the Act. The Union asserts that it had no knowledge of Complainant’s efforts to change union representation and that it was not obligated to pursue a meritless grievance.

In its brief, the School Board repeats its claim that this Board “only has jurisdiction over issues that are statutory and not related to simple issues of contract interpretation or discipline.”¹ In this case, however, the Complainant alleges that but for the Union’s breach of its duty of fair representation (DFR), the collective bargaining agreement would have been enforced and the Complainant reinstated to his former position. Accordingly, this 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 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 . . .

¹ The School Board made this claim in a motion to dismiss (Ex. 6) filed on January 27, 2012 which the Labor Board denied by procedural order on May 1, 2012.
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.

Where such a hybrid claim is made this Board must, of course, look at the contract to see whether the employer's conduct breached its terms. “[I]n construing contracts, we give effect to all the language included therein, as the law of contract interpretation . . . militates against interpreting a contract in a way that renders a provision superfluous.” Honulik v. Greenwich, 293 Conn. 698, 711 (2009); see also Connecticut National Bank v. Rehab Associates, 300 Conn. 314, 322 (2011).

In this case, the contract that governs the Complainant’s termination is a last chance agreement. The agreement expressly conditions the Complainant’s continued employment on “his agreement to . . . conduct himself in a professional and appropriate manner” and affords the School Board full and continuing authority to determine whether the Complainant violated this standard of conduct. Based on the evidence before us we find that the School Board did not breach the agreement when it terminated the Complainant on the basis of the events of December 13, 2010. Complainant’s written statement to Sikora, his sudden use of leave time, and his history of “anger and volatility issues” are consistent with Kanaitis’ version of events.

In reaching this decision, we address Complainant’s claim that Kanaitis intentionally fabricated an incident which was used as an excuse to fire the Complainant. “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). The School Board, however, does not rely on its sole discretion to determine unprofessional interpersonal conduct under the last chance agreement or otherwise claim that Complainant was subject to dismissal regardless of provocation. We find no evidence of malice and Complainant’s uncorroborated testimony is simply insufficient to support this allegation.

We next turn our attention to the issue of the Union’s duty of fair representation. Our standard for such claims is based on the United States Supreme Court’s reasoning in Vaca v. Sipes, 386 U.S. 177 (1967), that a union’s status as exclusive employee
representative imposes “a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.” Id. at 177. In order to establish a breach of this duty we have long required that a complainant produce evidence that the conduct at issue was motivated by hostility, bad faith, or dishonesty. State of Connecticut, Department of Developmental Services (Christopher Walsh), Decision No. 4397-A (2011); NEHCEU, District 1199 (Joe Rosa), Decision No. 4448 (2010); Local 1565, Council 4, AFSCME (David Bishop), Decision No. 3510 (1997); City of Bridgeport (Kenneth Brown), Decision No. 1963 (1980).

“A union does not breach its duty of fair representation simply by taking a position that adversely affects a member of the bargaining unit. Such conduct includes a union’s exercise of its discretion of how far to pursue a grievance, provided the decision is made in good faith and without discrimination.” City of New Haven (Derrick Dixon), Decision No. 4206 (2007). See also Teamster’s Union Local No. 677 (Ida Singer), Decision No. 1141 (1973)(“…a bargaining representative has discretion whether to file a grievance and how far to pursue it provided the representative acts in good faith and without discrimination”).

There is no evidence in the record that the Union breached its duty of fair representation to the Complainant. Complainant’s inquiries to other unions were of little consequence and the record is devoid of any evidence that Union leadership was even aware of the Complainant’s efforts in that regard. By timely filing a step one grievance the Union merely preserved it rights in the event it decided to pursue the matter after completing its investigation of the circumstances of Complainant’s dismissal. There is nothing before us to suggest that the Union had reason to doubt the veracity of Kanaitis’ statement or that the Union treated Complainant differently than similarly situated individuals. Under these circumstances we find that the Union’s decision not to proceed beyond step one was a valid exercise of its discretion and that it did not otherwise breach its duty of fair representation as to Complainant.
ORDER

By virtue of and pursuant to the power vested in the Connecticut Board of Labor Relations, it is hereby

ORDERED that the complaint filed herein be, and the same hereby is DISMISSED.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Patricia V. Low
Patricia V. Low
Chairman

Wendella A. Battey
Wendella A. Battey
Board Member

Kenneth Leech
Kenneth Leech
Alternate Board Member
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 29th day of May, 2013 to the following:

William A. Conti, Esq.  
Conti & Levy  
355 Prospect Street  
P.O. Box 239  
Torrington, CT 06790

Helen Apostolidis, Esq.  
P. O. Box 575  
Storrs, CT 06286

J. William Gagne, Jr., Esq.  
Gagne & Associates  
15 North Main Street  
West Hartford, CT 06107

Kevin M. Murphy, Director  
Council 4, AFSCME  
444 East Main Street  
New Britain, CT 06051

________________________________
Harry B. Elliott, Jr., General Counsel  
CONNECTICUT STATE BOARD OF LABOR RELATIONS