

**STATE OF CONNECTICUT  
OFFICE OF PUBLIC HEARINGS**

**Tanya Fields** : **OPH/WBR No.: 2006-036**  
**Complainant**

v.

**Dattco, Inc., Phil Johnson**  
**Richard Lange, Cooperative**  
**Educational Services, Inc., and**  
**Diane Wheeler**  
**Respondents** : **February 15, 2007**

**RULING  
RE: RESPONDENTS' MOTION TO DISMISS**

***Preliminary Statement***

On January 9, 2007, the respondents filed a motion to dismiss the present complaint. On November 28, 2006, at the initial conference, the undersigned ordered the complainant to file a response to the motion to dismiss on or before February 8, 2007; however, she failed to comply. Instead, the complainant filed a motion for continuance, which was denied without prejudice because the complainant did not provide an appropriate basis for a continuance. (See February 8, 2007 Order on Motion for Continuance.) As of the date of this Ruling, the complainant still has not filed a response to the motion to dismiss. For the reasons stated herein, the motion to dismiss is hereby GRANTED.

***Procedural History***

On November 3, 2006, the complainant (a school bus driver) filed a whistleblower retaliation complaint against the respondents alleging that the

respondents are large state contractors (and the individual respondents are employees of large state contractors) who retaliated against her in violation of General Statutes § 4-61dd (b) on September 8, 2006 by removing her from her primary route and discharging her from employment because she had filed a claim for unemployment benefits on September 17, 2006.

## **DISCUSSION**

The respondents filed the present motion to dismiss this action claiming that this tribunal lacks jurisdiction over the complainant's allegations because 1) they are not large state contractors (or employees thereof) as defined by § 4-61dd; 2) Cooperative Educational Services (CES) is not complainant's employer; 3) the complainant failed to allege that she engaged in any "whistleblowing" activity; and 4) complainant's allegations are untimely and she can not establish that she was retaliated against because she remains employed with Dattco.

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . 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. . . . In this regard, 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 [complainant]." (Citations omitted; internal quotation marks omitted.) *Cox v. Aiken*, 278

Conn. 204, 211 (2006). “The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone. . . . Where, however, as here, the motion is accompanied by supporting affidavits containing undisputed facts, the court may look to their content for determination of the jurisdictional issue and need not conclusively presume the validity of the allegations of the complaint.” (Citations omitted; internal quotation marks omitted.) *Ferreira v. Pringle*, 255 Conn. 330, 346-47 (2001).

Pursuant to General Statutes § 4-61dd, the respondents must be a state or quasi-public agency or a large state contractor in order for this tribunal to have jurisdiction over this complaint. The complainant alleged in her complaint that the respondents are large state contractors. According to General Statutes § 4-61dd (h) (2), a large state contractor is defined as “an entity that has entered into a large state contract with a state or quasi-public agency.” The statute defines a large state contract as “a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more.” General Statutes § 4-61dd (h) (1). The respondents provided two supporting affidavits, one from the Vice President of Human Resources and Risk Management at Dattco and the other from the coordinator of the Project Choice program at CES, both attesting to the fact that neither Dattco nor CES possesses a large state contract with a state or quasi-public agency. The complainant did not provide a response to refute the respondents’ position that they are not large state contractors and, thus, the respondents’ affidavits contain undisputed facts. Therefore, because Dattco and CES are not large state contractors and the individual respondents [Johnson and Lange (both employees of Dattco) and Wheeler (an

employee of CES)] do not work for large state contractors, this tribunal lacks jurisdiction to hear this complaint. Consequently, it is not necessary to discuss the respondents' other three grounds for dismissal.

So Ordered this \_\_\_\_\_ day of February 2007.

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The Honorable Donna Maria Wilkerson  
Presiding Human Rights Referee

c. Tanya A. Fields  
James F. Shea, Esq.