

Arden M. Coggins : Office of Public Hearings  
v. :  
Department of Correction : OPH/WBR No. 2010-127  
: March 3, 2010

Rulings re: the respondent's motion to dismiss, the complainant's motion for default judgment and the complainant's motion to amend the complaint

*Procedural history*

On January 19, 2010, the complainant, Arden M. Coggins, filed a complaint with the chief human rights referee (complaint). In his complaint, he alleged that his employer, the department of corrections (respondent), had violated General Statutes § 4-61dd<sup>1</sup> by retaliating against him for his "whistleblowing". On February 2, 2010, the respondent filed its answer and special defenses. On February 10, 2010, the respondent filed its motion to dismiss (motion). On February 26, 2010, the complainant filed his response to the motion (response), a motion for a default judgment because of the respondent's untimely filing of its answer and a motion to amend his complaint.

*Discussion*

I

According to the complainant, the respondent improperly terminated his employment. He then grieved his termination through the applicable collective

bargaining agreement. The complainant contends that, thereafter, in retaliation for his whistleblowing, the respondent has failed to comply with the terms of the arbitration award in his favor resulting from the grievance.

In its motion, the respondent argues that, following the issuance of the arbitration award, the complainant filed a second grievance pursuant to the collective bargaining agreement. In the second grievance, the complainant alleged that the respondent had not complied with the arbitration award (arbitration award grievance). According to the respondent, the complaint should be dismissed because, as provided in § 4-61dd, the complainant cannot challenge the same adverse action through both the arbitration award grievance and this complaint.

The complainant does not dispute that the arbitration award grievance and the complaint both contest the same personnel action. The complainant, however, “maintains that it was absolutely appropriate to have both a grievance filed via the Union and a complaint recorded and submitted via the Office of Public Hearings. While the Grievance filed via the union addresses the monetary aspects of the complaint, there are no allegations made or provision requested to address the consistent and admitted retaliatory behavior, harassment, and reprisal suffered by the Complainant. Whereas the Union grievance pertains to contractual and monetary violations, the complaint filed via the Office of Public Hearings engages issues regarding the illegal behavior and actions by the Respondent as a result of the Complainant’s Whistleblower activities as

documented in the CHRO discrimination complaint filed on September 25, 2009 (CHRO# 1010108).” Response, p. 2. The complainant attached to his response a copy of his arbitration award grievance that provides, in part, “Statement of Grievance (Facts involved) . . . Officer Coggins has an arbitrated award for back pay and the state has not satisfied that requirement.” The arbitration award grievance was filed on January 5, 2010, two weeks prior to his filing of this complaint.

## II

Section 4-61dd (b) (3) (A) provides in relevant part: “Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57.” (Emphasis added.) Section 4-61dd (b) (4), though, further provides in relevant part: “As an alternative to the provisions of subdivisions (2) [notifying the attorney general] and (3) [filing a complaint] of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency

employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract . . . .” (Emphasis added.)

Based on this statutory language, the decisions involving grievances and complaints have been consistent: “The statute is clear that an employee has an election of mutually exclusive alternative forums in which to challenge the consequences of a specific incident, regardless of the myriad of legal claims that may arise from the incident.” *Matthews v. Commissioner John Danaher, III*, OPH/WBR No. 2007-062, Ruling re: the respondents’ motion to dismiss the complaint, p. 4 (February 20, 2008) (2008 WL 916960). See also *Torres v. Dept. of Environmental Protection*, OPH/WBR No. 2008-087, Ruling on Motion to Dismiss, pp. 3-4 (April 14, 2009) (2009 WL 5207459); *Jones v. State of Connecticut, Judicial Branch*, OPH/WBR 2006-032, Ruling on Motion to Dismiss and Motion to Stay, pp. 2-4 (November 9 2006) (2006 WL 4753477). “In the case of the complainant, a state employee who is covered by a collective bargaining agreement, his alternatives are filing a complaint with the human rights referee or filing a grievance in accordance with the procedure provided in his collective bargaining agreement.” (Emphasis added.) *Matthews v. Danaher*, supra, p. 4. Even though grievances may involve contractual claims while a complaint may involve statutory claims of retaliation and even though remedies may differ between grievances and complaints, a complainant cannot file both a grievance and a complaint challenging the same specific personnel action.

In this case, the complainant has filed a grievance challenging the respondent's compliance with the arbitration award. Additionally, the complainant has filed a complaint that also challenges the respondent's compliance with the arbitration award. Because both the arbitration award grievance and the complaint challenge the same specific act (the respondent's compliance with the arbitration award) and because the arbitration award grievance was filed before the complaint was filed, the complaint is dismissed.

### III

The complaint is not saved by the complainant's proposed amendments to his complaint because the proposed additional retaliatory acts and threats, statements made by the respondent's assistance human rights director, occurred during a hearing on the arbitration award grievance.

#### *Conclusion and order*

For the reasons set forth, the complaint is dismissed. Because the complaint is dismissed, the complainant's motions for a default judgment to amend his complaint are denied as moot.

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Hon. Jon P. FitzGerald  
Presiding Human Rights Referee

c:  
Mr. Arden M. Coggins  
Ms. Vanesha Coggins  
Commissioner Brian Murphy  
Margaret Q. Chapple, Esq.

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<sup>1</sup> (a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section. Upon the conclusion of the investigation, the Attorney General shall where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. In addition to the exempt records provision of section 1-210, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section, disclose the identity of such person without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.

(b) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to (A) an employee of the Auditors of Public Accounts or the Attorney General under the

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provisions of subsection (a) of this section; (B) an employee of the state agency or quasi-public agency where such state officer or employee is employed; (C) an employee of a state agency pursuant to a mandated reporter statute; or (D) in the case of a large state contractor, an employee of the contracting state agency concerning information involving the large state contract.

(2) If a state or quasi-public agency employee or an employee of a large state contractor alleges that a personnel action has been threatened or taken in violation of subdivision (1) of this subsection, the employee may notify the Attorney General, who shall investigate pursuant to subsection (a) of this section.

(3) (A) Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183.

(B) The Chief Human Rights Referee shall adopt regulations, in accordance with the provisions of chapter 54, establishing the procedure for filing complaints and noticing and conducting hearings under subparagraph (A) of this subdivision.

(4) As an alternative to the provisions of subdivisions (2) and (3) of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract; or (B) an employee of a large state contractor alleging that such action has been threatened or taken may, after exhausting all available administrative remedies,

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bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

(5) In any proceeding under subdivision (2), (3) or (4) of this subsection concerning a personnel action taken or threatened against any state or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs not later than one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

(6) If a state officer or employee, as defined in section 4-141, a quasi-public agency officer or employee, an officer or employee of a large state contractor or an appointing authority takes or threatens to take any action to impede, fail to renew or cancel a contract between a state agency and a large state contractor, or between a large state contractor and its subcontractor, in retaliation for the disclosure of information pursuant to subsection (a) of this section to any agency listed in subdivision (1) of this subsection, such affected agency, contractor or subcontractor may, not later than ninety days after learning of such action, threat or failure to renew, bring a civil action in the superior court for the judicial district of Hartford to recover damages, attorney's fees and costs.

(c) Any employee of a state or quasi-public agency or large state contractor, who is found to have knowingly and maliciously made false charges under subsection (a) of this section, shall be subject to disciplinary action by such employee's appointing authority up to and including dismissal. In the case of a state or quasi-public agency employee, such action shall be subject to appeal to the Employees' Review Board in accordance with section 5-202, or in the case of state or quasi-public agency employees included in collective bargaining contracts, the procedure provided by such contracts.

(d) On or before September first, annually, the Auditors of Public Accounts shall submit to the clerk of each house of the General Assembly a report indicating the number of matters for which facts and information were transmitted to the auditors pursuant to this section during the preceding state fiscal year and the disposition of each such matter.

(e) Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to any

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employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section, the contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

(f) Each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

(g) No person who, in good faith, discloses information to the Auditors of Public Accounts or the Attorney General in accordance with this section shall be liable for any civil damages resulting from such good faith disclosure.

(h) As used in this section:

(1) "Large state contract" means a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more; and

(2) "Large state contractor" means an entity that has entered into a large state contract with a state or quasi-public agency.