Christopher P. Walsh	: Office of Public Hearings
	:
v.	: OPH/WBR No. 2009-123.
	:
Department of Developmental Services, et al.	: April 20, 2011

Ruling re: motions to dismiss filed February 16, 2010, February 19, 2010, June 18, 2010 and July 19, 2010

I

On December 17, 2009, Christopher P. Walsh, the complainant, filed a whistleblower retaliation complaint with the chief human rights referee. In his complaint, he alleged that the department of developmental services (DDS), "Attorney Elllen Carter/OLR" and the "CSEA/P-3B union" had violated General Statutes § 4-61dd[1] by retaliating against him for his disclosure of protected information, often referred to as "whistleblowing". On January 8, 2010, CSEA/P-3B filed its answer and special defenses. On January 14, 2010, DDS and Attorney Carter/OLR filed their answer and special defenses.

Mr. Walsh's motion to amend his complaint was granted on April 20, 2010.[2] In the amended complaint, Mr. Walsh added as respondents DDS's employees Steve Robson, Sarah Cook, Janet Wagner and Traci Casparino. He also clarified and replaced "CSEA/P-3B union" with "Connecticut State Employee Association/CSEA" and added "Patrice Peterson".

On February 16, 2010, DDS and Attorney Carter/OLR filed a motion to dismiss the complaint; Mr. Walsh filed an objection on February 17, 2010. On February 19, 2010, DDS and Attorney Carter/OLR filed a motion to dismiss the amended complaint. On June 18, 2010, DDS and Attorney Carter/OLR filed an amended motion to dismiss; Mr. Walsh filed an objection on June 22, 2008. On July 19, 2010, DDS, Mr Robson, Ms. Cook, Ms. Wagner, Ms. Casparin and Attorney Carter/OLR filed a second amended motion to dismiss. Mr. Walsh filed his objection on July 26, 2010. On July 30, 2010, DDS and Attorney Carter/OLR filed a reply to Mr. Walsh's objection.[3]

. The gravamen of the February 16, 2010, February 19, 2010, June 18, 2010 and July 26, 2010 motions to dismiss are: (1) the board of labor relations is an exclusive alternative forum to the filing of a whistleblower retaliation complaint with the chief human rights referee; (2) the complaint is untimely; (3) the chief human rights referee lacks subject matter jurisdiction to the extent that the individuals named as respondents are being sued in their individual capacity and (4) the complaint fails to state a claim as to an adverse personnel action.

For the reasons set forth, the motions to dismiss are denied for the following reasons: (1) the board of labor relations is not an exclusive alternative forum to the filing of a whistleblower retaliation complaint with the chief human rights referee; (2) the complaint is not untimely; (3) the individuals named as respondents are not being sued in their individual capacity; and (4) the complaint states a claim upon which relief could be granted.

II

A

1

The respondents contend that the board of labor relations and the chief human rights referee are mutually exclusive forums for filing complaints and, as Mr. Walsh had filed a complaint with the board of labor relations prior to filing his whistleblower retaliation complaint with the chief human rights referee, he is precluded from filing a whistleblower retaliation complaint pursuant to § 4-61dd with the chief human rights referee.

General Statutes § 4-61dd (b) (4) provides in part that: "As an alternative to the provisions of subdivisions (2) [notifying the Attorney General of the retaliation for whistleblowing] and (3) [filing a whistleblower retaliation complaint with the chief human rights referee] 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 . . . ." In this case, there is no evidence that Mr. Walsh notified the Attorney General of the whistleblower retaliation, or filed a complaint with the employee's review board under section 5-202 alleging whistleblower retaliation or filed a grievance in accordance with any applicable collective bargaining agreement

alleging whistleblower retaliation. Therefore, Mr. Walsh is not barred by the statute from filing a whistleblower retaliation complaint with the chief human rights referee.

The respondents concede that Mr. Walsh's "prohibited practices complaint before the Board [of Labor Relations] does not fall squarely under Conn. Gen. Stat. § 4-61dd (b) (4) (A) as a grievance filed by a state employee covered by a collective bargaining contract . . . ." Respondents' amended motion to dismiss, p. 2 (June 18, 2010). They argue, though, that "the State Board of Labor Relations . . . before whom the Complainant, Christopher Walsh . . . filed a prohibited practices complaint provides an analogous quasi-judicial forum to arbitration to thereby provide a mutually exclusive remedy under Conn. Gen. Stat. § 4-61dd (b) (4) (A) to bar the filing of the whistleblower retaliation complaint . . . ." Id., p. 1.

General Statutes § 1-2z provides that: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." The text of § 4-61dd (b) is plain and unambiguous: the mutually exclusive alternative venues available for a state employee to file a whistleblower retaliation complaint are with the Attorney General; § 4-61dd (b) (2); with the chief human rights referee; § 4-61dd (b) (3) (A); with the employees' review board; § 4-61dd (b) (4); or with a grievance through a collective bargaining agreement; § 4-61dd (b) (4). The board of labor relations is not

included in that very specific list of mutually exclusive alternatives nor does § 4-61dd have a general catch-all for an "analogous quasi-judicial forum". Thus, Mr. Walsh is not precluded from filing his whistleblower retaliation complaint with the chief human rights referee.

2

Further, a complainant is precluded only from bringing claims of whistleblower retaliation complaints in multiple forums. A complainant is not precluded from filing a whistleblower retaliation complaint with the chief human rights referee while pursuing non-whistleblower retaliation claims in other forums, even if the whistleblower retaliation and non-retaliation claims arise from the same set of facts. *Saeedi v. Dep't of Mental Health & Addiction Services*, Docket No. 2008-090, Final Decision, p. 74-75 (December 9, 2010) (2010 WL 5517188).[4]

"The statutory language of § 4-61dd when viewed in its entirely, its legislative history and the grievance process . . . reveal, however, that § 4-61dd does not require a state employee to abandon the grievance of non-whistleblower claims, even if those claims evolve from the same personnel action giving rise to his whistleblower retaliation claim.

* * *

"Instead, the statute should and reasonably can be construed as allowing an employee to pursue both grievances alleging non-whistleblower contractual violations

and also whistleblower retaliation complaints alleging retaliatory animus arising from the same personnel action." Id.

In this case, there is no evidence that Mr. Walsh filed a complaint with the employees' review board or filed a grievance through a collective bargaining agreement alleging that the respondents had retaliated against him for his whistleblowing. Therefore, he is not precluded from filing a whistleblower retaliation complaint with the chief human rights referee.

B

The respondents next contend that the whistleblower retaliation complaint was untimely filed. Section 4-61dd (b) (3) requires that complaints be filed within thirty days after an employee learns of the specific incident giving rise to a claim that a retaliatory personnel action has been threatened or has occurred. In this case, Mr. Walsh alleges that in retaliation for his whistleblowing the respondents conducted a biased investigation into fraudulent allegations that he had created a hostile work environment for his co-workers. According to Mr. Walsh, he did not learn of this investigation until November 19, 2009 during a hearing before the board of labor relations. See amended complaint. He then filed his complaint with the chief human rights referee on December 17, 2009, within thirty days of learning of the investigation as required by § 4-61dd. Therefore, his complaint is timely.

C

The respondents claim that the chief human rights referee lacks subject matter jurisdiction as to the individuals named as respondents if the individuals are being sued in their individual capacity. Mr. Walsh, though, has represented that he brought this action against Mr. Robson, Ms. Cook, Ms. Wagner and Ms. Casparin in their official capacities and not in their individual capacities. Mr. Walsh's "Objection to respondents' second amended motion to dismiss", p. 1 (July 25, 2010).

D

Finally, the respondents contend that the complaint should be dismissed because it fails to state a claim. Respondents' second amended motion to dismiss, pp. 10-11 (July 19, 2010). Complaints that allegedly fail to state a claim for relief are subject to a motion to strike, not a motion to dismiss. Regs., Conn. State Agencies § 4-61dd-15 (d).

For "purposes of a motion to strike, the only question is whether the complaint adequately alleges facts which, if proven, would establish a prima facie case . . . ." *Grof-Tisza v. Bridgeport Housing Authority*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. FBT-CV06-5003343s (December 14, 2010) (2010 WL 5610789, 3 n. 1). A complainant's prima facie case of whistleblower retaliation has three elements: (1) the complainant must have engaged in a protected activity as defined by the applicable statute; (2) the complainant must have incurred or been threatened with an adverse personnel action; and (3) there must be a causal connection between the

actual or threatened personnel action and the protected activity. *LaFond v. General Physics Services Corp.*, 50 F.3d 165, 173 (2d Cir. 1995).

The respondents contend that Mr. Walsh cannot meet the "adverse personnel action" element of a prima facie case. According to the respondents, "filing of a motion to quash subpoenas . . . and the introduction of an exhibit of the investigation of his workplace violence complaint are not adverse personnel actions for the reason that they did not involve actions affecting his employment. In fact, these actions amount to nothing more than the litigation strategy of Respondent Carter in her advocacy role on behalf of DDS in defense of the prohibited practices complaint before the [board of labor relations]." Respondents' second amended motion to dismiss, supra, p. 10.

Section 4-61dd prohibits personnel actions that "would dissuade a reasonable employee from whistleblowing." *Eagen v. Commission on Human Rights & Opportunities*, Superior Court, judicial district of New Britain at New Britain, Docket No. HHB-CV10-6004333s (February 23, 2011, p. 4) (2011 WL 1168499). In this case, it is not DDS's litigation strategy that is at issue. Rather, in his amended complaint, Mr. Walsh alleges that in retaliation for his whistleblowing, the respondents conducted a biased investigation into false allegations that he had created a hostile work environment for his co-workers. It is fair and rational to conclude that a reasonable employee would be dissuaded from whistleblowing if he knew that his employer would charge him with, and investigate him for, false allegations.

III

For the foregoing reasons, the motions to dismiss are denied.

_____
Hon. Jon P. FitzGerald
Presiding Human Rights Referee[5]

C:
Mr. Christopher P. Walsh
Eleanor M. Mullen, Esq.

[1] General Statutes § 4-61dd provides:

> (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 or for the purpose of investigating a suspected violation of subsection (a) of section 17b-301b until such time as the Attorney General files a civil action pursuant to section 17b-301c. 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 or sections 17b-301c to 17b-301g, inclusive, 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 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 pursuant to subsection (b) of section 17a-28; 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, 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 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.

[2] On or about February 10, 2010, Mr. Walsh served copy of a motion to amend his complaint. See “Order: re status conference”, Jerome D. Levine, Presiding Human Rights Referee (April 23, 2010). Mr. Walsh apparently mailed a copy of the motion to amend to this office that was not received. See Mr. Walsh’s “Motions for continuance and amended complaint” dated March 24, 2010 and filed on March 29, 2010 and his “Motion to amend complaint” dated February 5, 2010 and filed on April 1, 2010.

[3] As a result of the previous orders dismissing the complaint as to CSEA, Patrice Peterson and Attorney Carter/OLR, the remaining respondents are DDS and DDS employees Steve Robson, Sarah Cook, Janet Wagner and Traci Casparino. See

"Orders resulting from status conference" dated July 29, 2010 and the transcript of the hearing on January 5, 2011, pp. 11 and 32.

[4] As discussed in *Saeedi v. Dep't of Mental Health & Addiction Services*, Docket No. 2008-090, Final Decision, pp. 75-81 (December 9, 2010) (2010 WL 5517188):

> Previous decisions of this tribunal construed § 4-61dd (b) (4) to require an employee of a state or quasi-public agency or of a large state contractor to elect a single venue wherein to challenge the personnel action. This interpretation, however, ignored the overall context of § 4-61dd. This interpretation also ignored the specific language in § 4-61dd (b) (4) referencing subdivisions § 4-61dd (b) (2) and (b) (3). These subdivisions refer only to complaints alleging whistleblower retaliation. A more accurate interpretation of the statute is that an employee is required to make an election not as to where to challenge the specific incident but as to where to challenge the underlying retaliatory animus that motivated the employer to threaten or undertake the specific incident.
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> Subsection 4-61dd (a) and subdivision 4-61dd (b) (1) encourage employees of state or quasi-public agencies and of large state contractors to report wrongful acts and assure them of protection against retaliation for their whistleblowing. If after whistleblowing they experience an adverse personnel action, they may notify the attorney general, who shall conduct an investigation of whether the personnel action was retaliatory. § 4-61dd (b) (2). They may also file a complaint with the chief human rights referee for a human rights referee to determine whether the personnel action was retaliatory. § 4-61dd (b) (3). Thus, the context of the statute is limited to whistleblowing and to whom employees can raise the retaliatory motivation underlying the personnel action. The statute does not address the venue for contractual, tort or other claims that might also arise from that personnel action.
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> Within this context of whistleblowing and reporting retaliation, § 4-61dd (b) (4) then states: "As an alternative to the provisions of subdivisions (2) [reporting the retaliation to the attorney general] and (3) [reporting the retaliation to the chief human rights referee] 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.) Since subdivisions (2) and (3) only discuss venues where a whistleblower retaliation claim can be brought, subdivision (4) makes sense if it, also, is read only as proposing additional alternative venues only as to where a whistleblower retaliation claim can be brought. The phrase “giving rise to such claim” further validates an interpretation that it is the retaliation claim that is at issue in [§ 4-61dd], not simply the specific incident.

The superior court case of *Benevides v Roundhouse, LLC* establishes that an employee can pursue a whistleblower retaliation claim in one venue while also pursuing in other venues other claims arising from the same personnel action.

In *Benevides*, the plaintiff commenced a whistleblower retaliation lawsuit pursuant to General Statues § 31-51m against the defendant, her former employer. In her lawsuit, she alleged that her former employer, Roundhouse, LLC (Roundhouse), had terminated her employment in retaliation for her complaint (whistleblowing) to the department of labor (DOL) that Roundhouse had illegally classified her as an independent contractor. A month after commencing her lawsuit, the plaintiff then also filed a charge with the commission on human rights and opportunities (CHRO) against Roundhouse. In her CHRO charge, she alleged that Roundhouse had terminated her both because of her complaint to DOL and also because of her internal complaints about being sexually harassed. Roundhouse moved to dismiss the § 31-51m retaliation lawsuit claiming, in part, that the CHRO complaint and the whistleblower retaliation lawsuit both stemmed from the plaintiff’s whistleblowing regarding her improper classification.

The court observed that “while the evidence underlying both complaints may be related or even overlapping, the CHRO complaint and the present [whistleblower retaliation] action seek relief for distinctly different types of harm with separate statutory remedies. . . . [T]he CHRO has no jurisdiction over claims of misclassification of an employee as an independent contractor. The purview of the CHRO is limited to discriminatory employment practices including sexual harassment and retaliation in the form of termination of employment as defined by § 46a-51 (8).” *Benevides v Roundhouse, LLC.*, Superior Court, judicial district of Hartford at Hartford, Docket No. HHD CV 09-4045477 (March 8, 2010) (2010 WL 1508288, 2). The court then denied the motion to dismiss and allowed both the § 31-51m whistleblower retaliation lawsuit and the CHRO complaint to proceed simultaneously in the two different venues.

* * *

General Statute § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." To the extent that § 4-61dd (b) (3) is ambiguous, its legislative history supports the interpretation that a grievance that does not allege whistleblower retaliation is not a bar to the filing of a whistleblower retaliation complaint with the chief human rights referee.

Until 2002, § 4-61dd provided, in part, that a state employee alleging that he had been threatened with or subjected to a personnel action in retaliation for whistleblowing could appeal the personnel action either to the employees' review board or in accordance with an applicable collective bargaining agreement. It is important to note that the statute was, and still is, limited to whistleblowing and retaliation for whistleblowing.

In its 2002 session, the legislature enacted P.A. 02-91, introduced as H. B. 5487. In their discussion of the proposed bill, the legislators made clear that the "only changes we're making to the existing whistleblower statute in this bill is creating a rebuttable presumption if the job action took place within one year of a whistleblower stepping forward. And the second thing we're doing here to the underlying law is creating a new alternative avenue for a person to bring the complaint as an alternative to the existing avenues that are in the law as we speak." 45 H.R. Proc., Pt. 9, 2002 Sess., p. 2881. The "new route that this bill before us creates is with the Attorney General and the Chief Human Rights Referee. The existing routes [that] at employee can take today are to file with the employee review board or they can grieve under the provisions of their state contract, if their state contract includes such a provision or three they can bring a civil action in court." 45 H.R. Proc., Pt. 9, 2002 Sess., p. 2882. . . .

Legislators further remarked that: "We are amending here existing law. We're not creating a new whistleblower statute. *We're only creating a new avenue for whistleblowers to bring complaints under this statute* . . . ." (Emphasis added.) 45 H.R. Proc., Pt. 9, 2002 Sess., p. 2925-26. The only type of complaints that could have been brought, and that still can be brought, under § 4-61dd are whistleblower retaliation complaints. The legislators further remarked that the "two things this bill does, one creating the rebuttable presumption and two, creating the *alternative system* for

employees to bring the [whistleblower retaliation] complaint and go through the process. Both to try to give employees that have information that may be of real concern to us, a feeling that they can come forward with that information and be protected and that their job won't be jeopardized." (Emphasis added.) 45 H.R. Proc., Pt. 9, 2002 Sess., p. 2871.

The legislative intent is clear that the purpose of P.A. 02-91 was limited to creating alternative venues for bringing whistleblower retaliation claims under § 4-61dd, not depriving employees of non-whistleblower contractual rights they may also have under their collective bargaining agreement.

[5] This case was assigned to this referee on April 15, 2011.