LOCALS 2863, 3042, 1303-052 AND 1303-115, COUNCIL 4, AFSCME, AFL-CIO *v.* TOWN OF HAMDEN ET AL.
(AC 31751)

Harper, Bear and Pellegrino, Js.

Argued February 9—officially released May 17, 2011

(Appeal from Superior Court, judicial district of New Britain, Cohn, J.)

J. William Gagne, Jr., for the appellants (plaintiffs).

Jarad M. Lucan, with whom, on the brief, was *Christopher M. Hodgson*, for the appellee (named defendant).

Karen K. Buffkin, general counsel, with whom, on the brief, was *Alexandra M. Gross*, assistant general

counsel, for the appellee (defendant state board of labor relations).

Opinion

BEAR, J. The plaintiffs, locals[1] of Council 4, American Federation of State, County and Municipal Employees (union), appeal from the judgment of the trial court affirming the decision of the defendant state board of labor relations (board) dismissing complaints brought by the union against the defendant town of Hamden (town). The union claims that the town violated General Statutes § 7-467 et seq. of the Municipal Employee Relations Act (act); General Statutes § 7-460 et seq.; by refusing to pay retroactive wages to former employees who had been union members. The union argues that the trial court erred in holding that the union's former members were not "employees," as defined in the act, and affirming the board's finding that it was without jurisdiction to consider the union's claims. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to the union's appeal. The union was subject to a collective bargaining agreement that expired on June 30, 2003. In late 2006, locals 2863, 3042 and 1303-052[2] and the town settled, ratified and implemented successor collective bargaining agreements for the period of July 1, 2003, to June 30, 2007. The wage schedule in each of these agreements was as follows:

"Effective retroactively to July 1, 2003, all wage rates in effect on June 30, 2003 shall be increased by two and one half (2 1/2) percent.

"Effective retroactively to July 1, 2004, all wage rates in effect on June 30, 2004 shall be increased by three (3) percent.

"Effective retroactively to July 1, 2005, all wage rates in effect on June 30, 2005, shall be increased by three (3) percent.

"Effective July 1, 2006, all wage rates in effect on June 30, 2006, shall be increased by three (3) percent."

None of the collective bargaining agreements at issue contain any provision concerning retroactive wages and/or other financial benefits for former employees.

On November 8, 2006, an arbitrator issued an interest arbitration award in the matter of the town and local 1303-115[3] covering the period of July 1, 2003, through June 30, 2007. The wage provisions in the award were identical to the aforementioned successor collective bargaining agreements. The interest arbitration award did not contain any provision concerning retroactive wages and/or other financial benefits to former employees.

During the period after June 30, 2003, in which the bargaining process was ongoing but before ratification or implementation of the agreements, various members of each local either retired or otherwise left the town's

employ. On October 20, 2006, and February 8, 2007, the union filed complaints with the board, alleging that the town had refused to bargain in good faith and had violated the act in that the town refused to pay to the former employees the retroactive wages provided for in the new agreement.

On October 12, 2007, the town submitted a motion to dismiss both complaints, asserting that it had no obligation to bargain on the subject of retroactive wages for retirees who were not employees, as defined in the act. The town further asserted that, because it had no obligation to bargain with nonemployees, the board lacked jurisdiction over the union's claims. On October 17, 2007, the town filed two complaints alleging that the union was bargaining in bad faith by pursuing the complaints.

On May 19, 2008, the matters were heard before the board. The board issued its ruling on October 3, 2008, concluding that the case is "clearly answered by our case law, which is based on the federal law. . . . The [a]ct's duty to bargain in good faith applies only to people who are employees within the meaning of the [a]ct and within the bargaining unit. . . . Once an employee leaves the bargaining unit, the duty to bargain imposed by the [a]ct no longer has any application. . . . Accordingly, an employer cannot be found to have committed a refusal to bargain with respect to persons who are not employees within the meaning of the [a]ct. Likewise, the [u]nion has no duty to represent [nonbargaining], [nonemployees]." (Citations omitted.) The board also rejected the union's argument that the issue of nonemployee retroactive wages has an effect on current employees because current employees are concerned with whether they will receive retroactive wages when they leave their jobs. The board determined that the matter "solely concerns the rights of [nonemployees]." Accordingly, the board granted the town's motion to dismiss.[4]

The union appealed from the board's decision to the Superior Court. On November 9, 2009, the trial court dismissed the union's appeal, holding that the board correctly concluded that the retired members were not employees as defined in the act and, therefore, that the board "did not err in finding that it was without jurisdiction to consider the union's claim of the town's bargaining in bad faith." Accordingly, the court held that the board did not act illegally or in abuse of its discretion in granting the motion to dismiss. This appeal followed.

"Our review of an agency's decision on questions of law is limited by the traditional deference that we have accorded to that agency's interpretation of the acts it is charged with enforcing. . . . In this case, General Statutes § 7-471 (2), which defines the powers of the state board of labor relations, authorizes the board to

determine whether a position is covered by sections 7-467 to 7-477, inclusive, in the event of a dispute between the municipal employer and an employee organization. Our duty is to decide whether, in light of the evidence, the [agency charged with enforcement] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion." (Citations omitted; internal quotation marks omitted.) *Police Dept.* v. *State Board of Labor Relations*, 225 Conn. 297, 300, 622 A.2d 1005 (1993).[5]

The union argues that the court erred in holding that the board correctly concluded that the union's retired members were not "employees" as defined in the act. We disagree.

General Statutes § 7-469 provides in relevant part: "The municipal employer and such employee organization as has been designated as exclusive representative of employees in an appropriate unit, through appropriate officials or their representatives, shall have the duty to bargain collectively. . . ." "Municipal employers or their representatives or agents are prohibited from . . . (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit . . . ." General Statutes § 7-470 (a). The act defines "employee" as "any employee of a municipal employer, whether or not in the classified service of the municipal employer, except elected officials, administrative officials, board and commission members, certified teachers, part-time employees who work less than twenty hours per week on a seasonal basis, department heads and persons in such other positions as may be excluded from coverage under sections 7-467 to 7-477, inclusive . . . ." General Statutes § 7-467 (2).

The union argues that, for the purposes of the prerequisite of subject matter jurisdiction, the date that should be used in determining who is an "employee" for the purposes of the act is July 1, 2003, the initial retroactive date of the pay increase.[6] We note that the statutory definition of "employee" does not include retired or former employees. "The meaning ascribed to the term employee under labor law is consistent with its common meaning. We ordinarily look to the dictionary definition of a word to ascertain its commonly approved usage. . . . Webster's Third New International Dictionary, for example, defines the term employee as '1: *one employed* by another usually in a position below the executive level and usually for wages; 2: in labor relations: any worker *who is under wages or salary* to an employer and who is not excluded by agreement from consideration as such a worker.' . . . See also Black's Law Dictionary (8th Ed. 2004) (defining employee as '[a] person who works in the service of another person [the employer] under an express or implied contract of hire,

under which the employer has the right to control the details of work performance'). These definitions make it evident that, like the meaning of employee under labor law, the currency of the relationship is paramount." (Citations omitted.) *Garcia* v. *Hartford*, 292 Conn. 334, 345, 972 A.2d 706 (2009). Additionally, "[t]he seminal case of *Allied Chemical & Alkali Workers of America, Local Union No. 1* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157, 172, 92 S. Ct. 383, 30 L. Ed. 2d 341 (1971), squarely held that retirees are not employees within the bargaining unit." *Garcia* v. *Hartford*, supra, 343.

Pursuant to *Allied Chemical & Alkali Workers of America, Local Union No. 1*, retirees who are no longer employees lose their status as bargaining unit members and are outside the scope of representational responsibility of their unions. See *Allied Chemical & Alkali Workers of America, Local Union No. 1* v. *Pittsburgh Plate Glass Co.*, supra, 404 U.S. 181 n.20 ("[s]ince retirees are not members of the bargaining unit, the bargaining agent is under no statutory duty to represent them in negotiations with the employer"). Once an employee leaves the bargaining unit, the duty of a municipality to bargain under the act with that employee ceases. Thus, we agree with the board that "an employer cannot be found to have committed a refusal to bargain with respect to persons who are not employees within the meaning of the [a]ct." On the basis of our statutes and case law, it is clear that the board did not act unreasonably, arbitrarily, illegally or in abuse of its discretion in determining that the town was not obligated to bargain with the union with respect to the claims of former employees, regardless of when their claims arose.[7]

The union, however, also argues that the board should have jurisdiction because the issues presented "vitally affect the terms and conditions of employment"; (internal quotation marks omitted) *Allied Chemical & Alkali Workers of America, Local Union No. 1* v. *Pittsburgh Plate Glass Co.*, supra, 404 U.S. 176; of current employees. See id., 178 (subjects for mandatory collective bargaining normally include only issues that settle an aspect of relationship between employer and employees, but matters involving individuals outside employment relationship not wholly excluded). The union argues that current employees are concerned with whether they will receive retroactive wages when they leave their jobs. This case, however, concerns former employees and does not concern current employees negotiating for a future benefit for themselves.[8] Therefore, the board did not abuse its discretion in determining that the issue "solely concerns the rights of [nonemployees]" who were no longer members of the bargaining units, and it correctly determined that it thus lacked jurisdiction to act on their claims. See *Allied Chemical & Alkali Workers of America, Local Union No. 1* v. *Pittsburgh Plate Glass Co.*, supra, 182

("[effect that] bargaining on behalf of pensioners would have on the negotiation of active employees' retirement plans is too speculative a foundation on which to base an obligation to bargain").

We conclude that the board did not act unreasonably, arbitrarily, illegally or in abuse of its discretion in concluding that the town had no duty to bargain on a subject affecting the rights of former employees. Accordingly, we conclude that the trial court properly determined that the board did not err in granting the town's motion to dismiss.[9]

The judgment is affirmed.

In this opinion the other judges concurred.

[1] The original complaint was filed with the defendant state board of labor relations by locals 818, 2863, 3042 and 1303-052. On February 8, 2007, local 1303-115 filed another complaint containing the same allegations. The complaint subsequently was amended on October 12, 2007, and the amended complaint eliminated local 818 as a party.

[2] Local 2863 is the exclusive bargaining representative of all nonsupervisory town hall employees working twenty or more hours per week as crossing guards regularly employed by the town. Local 3042 is the exclusive bargaining representative of all nonsupervisory employees working twenty or more hours per week in the department of parks and recreation. Local 1303-052 is the exclusive bargaining representative of all regular, full-time technical and professional employees in the town engineering department.

[3] Local 1303-115 represents all full-time and part-time employees of the town library system.

[4] The board also dismissed the town's complaints against the union.

[5] The union argues that the question of whether the board has jurisdiction to consider their claim is a legal question not subject previously to judicial scrutiny, and, therefore, the board's determination is not entitled to deference. See *Dept. of Public Safety* v. *Freedom of Information Commission*, 103 Conn. App. 571, 576, 930 A.2d 739, cert. denied, 284 Conn. 930, 934 A.2d 245 (2007). For the reasons we will discuss, we disagree that this issue has not previously been subject to judicial scrutiny.

[6] All of the former employees were employees on July 1, 2003, the date of the initial retroactive period. None were employed in late 2006 when the new agreement was reached.

[7] The union urges us to adopt the reasoning in *Summit County Children's Services Board* v. *Local No. 4546, Communications Workers of America (AFL-CIO)*, Docket No. 21184, 2003 WL 356300 (Ohio App. February 19, 2003). In *Summit County Children's Services Board*, the union filed a grievance on behalf of former employees who claimed that they were due a retroactive pay increase pursuant to a collective bargaining agreement. Id. An arbitrator awarded the pay increase, and the employer appealed, claiming that the arbitrator lacked jurisdiction because the former employees were no longer members of the bargaining unit, and, therefore, neither the union nor the employees had standing to file grievances on behalf of former employees. Id. The Court of Appeals of Ohio, Ninth District, concluded that the arbitrator did not act unlawfully or capriciously in concluding that he had jurisdiction. Id. We are not persuaded that we should adopt the *Summit County Children's Services Board* court's reasoning.

First, *Summit County Children's Services Board* involved review of a decision by an arbitrator regarding whether the arbitrator had jurisdiction over the former employees' grievances. In the present case, we are reviewing, with our "traditional deference that we have accorded to that agency's interpretation of the acts it is charged with enforcing"; *Police Dept.* v. *State Board of Labor Relations*, supra, 225 Conn. 300; a determination by our state board of labor relations that it did not have jurisdiction over the union's claims. Second, other courts in Ohio have declined to apply *Summit County Children's Services Board*. See *Carter* v. *Trotwood-Madison City Board of Education*, 181 Ohio App. 3d 764, 773, 910 N.E.2d 1088 (2009) ("[w]hile [the *Summit County Children's Services Board* court's] approach has some logic . . . we cannot ignore the wording of the [collective bargaining agreement] and the case law, which seems almost uniformly to follow the approach that retirees are not bound by the grievance procedure in the

collective-bargaining agreement unless they are specifically included"); see also *Independence Fire Fighters Assn.* v. *Independence*, 121 Ohio App. 3d 716, 721, 700 N.E.2d 909 (retired firefighters challenging calculation of amounts paid to them upon retirement for accrued but unused holidays, sick leave, and vacation time were not required to exhaust administrative remedies because they no longer were employees and therefore were not governed by collective bargaining agreement), appeal denied, 80 Ohio St. 3d 1449, 686 N.E.2d 276 (1997), cited in *Garcia* v. *Hartford*, supra, 292 Conn. 344.

[8] The collective bargaining agreements at issue were in effect between July 1, 2003, and June 30, 2007, and they did not include any provision for retroactive wages for current employees who retired after June 30, 2007.

[9] The union makes additional arguments that denying the former employees retroactive pay would lead to an inequitable result or be unlawful pursuant to the state's wage statutes. We do not address these issues because they are unrelated to the board's decision that it lacked jurisdiction. The issue of whether the former employees may have other remedies, including a possible breach of contract claim against the town, is not before us.

STATE OF CONNECTICUT

A.C. 31751 HHB CV 08-4019054	:	SUPERIOR COURT
LOCALS 2863, 3042, 1303-052 & & 1303-115, COUNCIL 4, AFSCME, AFL-CIO	:	TAX SESSION JUDICIAL DISTRICT OF NEW BRITAIN
V.	:	
CONNECTICUT STATE BOARD OF LABOR RELATIONS & TOWN OF HAMDEN	:	
	:	November 9, 2009

Present: **The Honorable Henry S. Cohn, Judge**

JUDGMENT

This action, in the nature of an appeal from a decision of the defendant, came to this court on November 4, 2008, and thence to later dates when the parties appeared and were at issue before the court, as on file, and thence to the present time.

WHEREUPON, it is adjudged that the plaintiffs' appeal be and is hereby DISMISSED after the court found that the board lacked jurisdiction to hear complaints raised by persons who were no longer employees and thus the right to bargain in good faith under the Municipal Employee Relations Act was not required.

By the Court,

Stephen Goldschmidt, Court Officer

FILED
2010 JAN 14 A 9:24
SUPERIOR COURT

JAN 21

NO. CV 08 4019054S	:	SUPERIOR COURT
LOCALS 2863, 3042, 1303-052, 1303-115, COUNCIL 4, AFSCME, AFL-CIO	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
TOWN OF HAMDEN; CONNECTICUT STATE BOARD OF LABOR RELATIONS	:	NOVEMBER 9, 2009

MEMORANDUM OF DECISION

The plaintiffs,[1] locals of the AFSCME, AFL-CIO union, (the union), appeal from an October 3, 2008 final decision of the Connecticut state board of labor relations (the board) dismissing complaints brought by the plaintiffs against the town of Hamden (the town).

The board investigated the complaints and held a hearing on May 19, 2008. At the conclusion of the hearing, the town submitted a motion to dismiss. In its final decision of October 3, 2008 (Return of Record, ROR, Item 3), the board made the following findings of fact:

1. The Town is an employer within the meaning of the Act.

2. Local 2863 of Council 4 is an employee organization within the meaning of the Act and at all material times has

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[1] Locals 2863, 3042, 1303-052 & 1303-115 Council 4, AFSCME, AFL-CIO were the named plaintiffs.

been the exclusive representative of all non-supervisory Town Hall employees working twenty (20) or more hours per week and crossing guards regularly employed by the Town.

3. Local 3042 of Council 4 is an employee organization within the meaning of the Act and at all material times has been the exclusive bargaining representative of all non-supervisory employees working twenty (20) or more hours per week in the Department of Parks and Recreation.

4. Local 1303-052 of Council 4 is an employee organization within the meaning of the Act and at all material times has been the exclusive bargaining representative of all regular, full time technical and professional employees in the Engineering Department.

5. Local 1303-115 of Council 4 is an employee organization within the meaning of the Act and at all material times has been the exclusive bargaining representative of all permanent employees of the Hamden Library System including part-time employees working less than twenty (20) hours per week.

6. Recently settled successor collective bargaining agreements have been ratified and implemented between the Town and Council 4 Locals 818, 2863, 3042 and 1303-052. The wage schedule in each of the agreements are the same and reads as follows:

Effective retroactively to July 1, 2003, all wage rates in effect on June 30, 2003 shall be increased by two and one half (2 ½) percent.

Effective retroactively to July 1, 2004, all wage rates in effect on June 30, 2004 shall be increased by three (3) percent.

Effective retroactively to July 1, 2005, all wage rates in effect on June 30, 2005, shall be increased by three (3) percent.

Effective July 1, 2006, all wage rates in effect on June 30, 2006, shall be increased by three (3) percent.

7. On November 8, 2006, an interest arbitration award was issued in the Matter of Town of Hamden and Local 1303-115 of Council 4, covering the period of July 1, 2003 through June 30, 2007. The wage provisions in the Award are exactly the same as found in Finding of Fact #6.

8. Thirteen or fourteen members of Local 1303-115 either retired or resigned from the Library between July 1, 2003 and November 8, 2006, the issuance date of the interest arbitration award.

9. An internal audit conducted by the Town found one former employee (a firefighter not in any of the Council 4 bargaining units) had been paid retroactive wages after retirement from the Town.

10. Library payroll information for the period between July 1, 1999 and March 10, 2000 reveal that William Daniels, a former Local 1303-115 member, received money from the Town after resigning his part-time position but the reason for the payments is not known.

11. On April 19, 2006, May 8, 2006 and May 11, 2006, then Library Technical Services Head Celeste Krahl and Personnel Director Kenneth Kelley exchanged e-mails concerning her retirement, in which Ms. Krahl asked if her pension benefits would be adjusted to reflect any retroactive wage increases. Mr. Kelley responded that he would recalculate Ms. Krahl's pension benefit after the Local 1303-115 arbitration award issued.

12. Immediately prior to her retirement, Ms. Krahl was Vice-President of the Local 1303-115 bargaining unit and a member of its contract negotiations team.

13. Ms. Krahl retired and her pension benefits have not been adjusted to include the retroactive wages increases. None of the collective bargaining agreements at issue contain any provisions concerning retroactive wages and/or other financial benefits for employees separated from employment. (ROR, item 3, pp. 2-3).

Based on these findings, the board stated that the issue raised on the motion to dismiss was one of the jurisdiction of the board to address the alleged bad faith of the town in failing to give retirees retroactive wages. The board concluded: "We find this case clearly answered by our case law, which is based on the federal law. . . . The Act's[2] duty to bargain in good faith applies only to people who are employees within the meaning of the Act and within the bargaining unit. . . . Once an employee leaves the bargaining unit, the duty to bargain imposed by the Act no longer has any application. . . . Accordingly, an employer cannot be found to have committed a refusal to bargain with respect to persons who are not employees within the meaning of the Act. Likewise the Union has no duty to represent non-bargaining unit, non-employees." (Id., p. 4)

The board also concluded that the issue of non-employee retroactive wages does not have an effect on current employees' receiving retroactive wages when they leave

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[2] The board is referring to General Statutes § 7-470 (a) (4), also known as the Municipal Employee Relations Act or MERA.

their jobs. The sole remedy for the non-employees was to bring an action for breach of contract in Superior Court.[3] (Id., pp. 4-5). The board granted the town's motion to dismiss. (Id.) This appeal followed.[4]

In deciding whether the motion to dismiss was properly granted, the court employs the following standard to review the findings of fact and conclusions of the board. "[J]udicial review of the [labor board's] action is governed by the [UAPA, General Statutes §§ 4-183 (j), 4-184], and the scope of that review is very restricted. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our [standard of review] is to determine, in view of all of the evidence, whether the agency . . .acted unreasonably, arbitrarily, illegally or in abuse of discretion." (Citation omitted). *Council 4, AFSCME, AFL-CIO* v. *State Board of Labor Relations*, 111 Conn. App. 666, 671-72, 961 A.2d 451 (2008), cert. denied, 290 Conn. 901, 967 A.2d 112

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[3] The record shows that a contract action has been brought in Superior Court by certain employees. (ROR, Item 1, exhibit 19).

[4] The plaintiffs are aggrieved for purposes of § 4-183 (a) as their complaints were dismissed by the board.

(2009).

As to the granting of a motion to dismiss on jurisdictional grounds, *United Parcel Service, Inc.* v. *Administrator*, 209 Conn. 381, 385-86, 551 A.2d 724 (1988) is applicable: "If . . . the issue is one of law, the court has the broader responsibility of determining whether the administrative action resulted from an incorrect application of the law to the facts found or could not reasonably or logically have followed from such facts. Although a court may not substitute its own conclusions for those of the administrative board, it retains the ultimate obligation to determine whether the administrative action was unreasonable, arbitrary, illegal or an abuse of discretion."

Here, the board has found factually in finding 8 that between 2003 and the issuance of the arbitration award in 2006, thirteen or fourteen members of the union retired or resigned. The board also stated at page 4 that "[d]uring the time that the bargaining process was continuing and before ratification or implementation of the agreements, various members of each Local either retired or otherwise left the Town's employ." The board also stated at page 4 that "[n]one of the agreements specifically addresses the wages of those who left their jobs while the contracts were being settled." The board also found in finding 13 that "[n]one of the collective bargaining agreements at issue contain any provisions concerning retroactive wages and/or other financial benefits for employees separated from employment."

The board correctly concluded under these facts the union's retired members were not "employees" for purposes of General Statutes § 7-470 (a) (4), a requirement for the labor board to take jurisdiction. Further the definition of "employee" in § 7-467 (2) *does not* include a former employee.

The analogous federal provision has been so construed. *Allied Chemical & Alkali Workers of America, Local Union No. I* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157, 92 S. Ct. 383, 30 L. Ed.2d 341 (1971). See also American Jurisprudence, 2d, *Labor and Labor Relations*, § 756: "Retired workers are not employees since their termination of the employer-employee relationship is final in that they are completely removed from the employer's payroll and seniority lists, perform no services for the employer, are paid no wages, are under no restrictions as to other employment, and have no right or expectations of employment." This rule was applied, for example, in *Connell* v. *United States Steel Corp.*, 516 F.2d 401, 404-05 (5th Cir. 1975) where the courts refused to dismiss the plaintiff's civil action involving pension benefits, due to claimed exclusive jurisdiction with the National Labor Relations Board. The NLRB had no jurisdiction as the plaintiff was a retiree.

Our Supreme Court recently noted that "[t]he seminal [*Pittsburgh*] case squarely held that retirees are not employees within the bargaining unit." *Garcia* v. *Hartford*, 292 Conn. 334, 343, 972 A.2d 706 (2009). Further "[i]n judging whether the labor board's

interpretation was reasonable, we may look to federal labor law for guidance in construing our labor relations acts." *AFSCME, Council 4, Local 287* v. *State Board of Labor Relations*, 49 Conn. App. 513, 516, 715 A.2d 803 (1998), quoting *Board of Education* v. *State Board of Labor Relations*, 217 Conn. 110, 119-20, 584 A.2d 1172 (1991). The board therefore did not err in finding that it was without jurisdiction to consider the union's claim of the town's bargaining in bad faith. See also *Town of West Hartford*, Board Decision No. 2667 (1988).

The board could also reasonably conclude that this rule applied where the retired employee was an "employee" as defined § 7-467 (2) for a period of time in the retroactive period. The rationale of the *Pittsburgh* case is that the former employee has severed his ties with the employer, and therefore the employer has no duty to bargain with the former employee.

The union claims an exception to the *Pittsburgh* case, supra, 404 U.S. 180–that the board should have jurisdiction to the extent that the retired workers raise an issue that affects current employees. It relies on the board's decision in *Plainfield Board of Education*, Decision No. 4150 (2006). In *Plainfield*, the retired workers were disputing the calculation of their pensions and the term "break in service." The board denied a motion to dismiss because the issue raised could have implications for current workers.

The union in this case, however, is not raising a matter that impacts current

workers. The court agrees with the board (ROR, Item 3, p. 4): "However the Union's argument misses the mark. The circumstances of this case do not involve active employees negotiating for a future benefit. This matter solely concerns the rights of non-employees." There is no dispute over what is meant by the term "retroactive."

The board did not act illegally or in abuse of its discretion in granting the town's motion to dismiss. Therefore the appeal is dismissed.

Henry S. Cohn, Judge

STATE OF CONNECTICUT

A.C. 31751 HHB CV 08-4019054	:	SUPERIOR COURT
LOCALS 2863, 3042, 1303-052 & & 1303-115, COUNCIL 4, AFSCME, AFL-CIO	:	TAX SESSION JUDICIAL DISTRICT OF NEW BRITAIN
V.	:	
CONNECTICUT STATE BOARD OF LABOR RELATIONS & TOWN OF HAMDEN	:	
	:	November 9, 2009

Present: **The Honorable Henry S. Cohn, Judge**

JUDGMENT

This action, in the nature of an appeal from a decision of the defendant, came to this court on November 4, 2008, and thence to later dates when the parties appeared and were at issue before the court, as on file, and thence to the present time.

WHEREUPON, it is adjudged that the plaintiffs' appeal be and is hereby DISMISSED after the court found that the board lacked jurisdiction to hear complaints raised by persons who were no longer employees and thus the right to bargain in good faith under the Municipal Employee Relations Act was not required.

By the Court,

Stephen Goldschmidt, Court Officer

FILED
2010 JAN 14 A 9:24
SUPERIOR COURT

JAN 21

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
TOWN OF HAMDEN

-AND-

LOCALS 2863, 3042, 1303-052, 1303-115
COUNCIL 4, AFSCME, AFL-CIO

DECISION NO. 4343

OCTOBER 3, 2008

Case Nos. MPP-26,311
MPP-26,503
MEPP-26,945
MEPP-26,946

APPEARANCES:

Attorney Christopher M. Hodgson
For the Town

Attorney J. William Gagne, Jr.
For the Union

DECISION AND DISMISSAL OF COMPLAINTS

On October 20, 2006, Locals 818, 2863, 3042 and 1303-052, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint (Case No. MPP-26,311), amended on October 12, 2007 alleging that the Town of Hamden (the Town) violated § 7-470 of the Municipal Employee Relations Act (MERA or the Act) by refusing to pay retroactive wages to former employees.[1] On February 8, 2007 the Union filed another complaint (Case No. MPP-26,503) also alleging that the Town had violated the Act by refusing to pay retroactive wages to former employees.

On October 12, 2007, during the investigatory process for the Union's complaints, the Town submitted a Motion to Dismiss both complaint. Thereafter, on October 17, 2007 the Town filed two complaints (Case Nos. MEPP-26,945 and MEPP-26,946) alleging that the Union was bargaining in bad faith by pursuing its complaints in Case Nos. MPP-26,311 and MPP-26,503 and seeking attorneys fees and costs.

[1] The amended complaint deleted Local 818 as a party to the complaint.

After all the requisite preliminary administrative steps had been taken, the matters came before the Labor Board for a formal hearing on May 19, 2008. Both parties appeared, were represented and given the opportunity to present evidence, examine and cross-examine witnesses and make argument. The parties submitted a partial stipulation of facts. The Town submitted its Motion to Dismiss and the Union submitted an Objection to the Motion. The Town objected to the Union's Motion.

On the basis of the entire record before us including the stipulated facts and arguments of the parties, we make the following findings of fact and conclusions of law and we dismiss all the complaints.

FINDINGS OF FACT

1. The Town is an employer within the meaning of the Act.

2. Local 2863 of Council 4 is an employee organization within the meaning of the Act and at all material times has been the exclusive representative of all non-supervisory Town Hall employees working twenty (20) or more hours per week and crossing guards regularly employed by the Town.

3. Local 3042 of Council 4 is an employee organization within the meaning of the Act and at all material times has been the exclusive bargaining representative of all non-supervisory employees working twenty (20) or more hours per week in the Department of Parks and Recreation.

4. Local 1303-052 of Council 4 is an employee organization within the meaning of the Act and at all material times has been the exclusive bargaining representative of all regular, full time technical and professional employees in the Engineering Department.

5. Local 1303-115 of Council 4 is an employee organization within the meaning of the Act and at all material times has been the exclusive bargaining representative of all permanent employees of the Hamden Library System including part-time employees working less than twenty (20) hours per week.

6. Recently settled successor collective bargaining agreements have been ratified and implemented between the Town and Council 4 Locals 818, 2863, 3042 and 1303-052. (Exs. 7, 8, 9, 11). The wage schedule in each of the agreements are the same and reads as follows:

> Effective retroactively to July 1, 2003, all wage rates in effect on June 30, 2003 shall be increased by two and one half (2 1/2) percent.
>
> Effective retroactively to July 1, 2004, all wages rates in effect on June 30, 2004 shall be increased by three (3) percent.

Effective retroactively to July 1, 2005, all wage rates in effect on June 30, 2005, shall be increased by three (3) percent.

Effective July 1, 2006, all wage rates in effect on June 30, 2006, shall be increased by three (3) percent.

7. On November 8, 2006, an interest arbitration award was issued in The Matter of Town of Hamden and Local 1303-115 of Council 4, covering the period of July 1, 2003 through June 30, 2007. (Ex. 10). The wage provisions in the Award are exactly the same as found in Finding of Fact #6.

8. Thirteen or fourteen former members of Local 1303-115 either retired or resigned from the Library between July 1, 2003 and November 8, 2006, the issuance date of the interest arbitration award. (Ex. 12).

9. An internal audit conducted by the Town found one former employee (a firefighter not in any of the Council 4 bargaining units) had been paid retroactive wages after retirement from the Town.

10. Library payroll information for the period between July 1, 1999 and March 10, 2000 reveal that William Daniels, a former Local 1303-115 member, received money from the Town after resigning his part-time position but the reason for the payments is not known. (Exs. 16 & 17).

11. On April 19, 2006, May 8, 2006 and May 11, 2006, then Library Technical Services Head Celeste Krahl and Personnel Director Kenneth Kelley exchanged e-mails concerning her retirement, in which Ms. Krahl asked if her pension benefits would be adjusted to reflect any retroactive wage increases. Mr. Kelley responded that he would recalculate Ms. Krahl's pension benefit after the Local 1303-115 arbitration award issued. (Exs. 13, 14 & 15).

12. Immediately prior to her retirement, Ms. Krahl was Vice-President of the Local 1303-115 bargaining unit and a member of its contract negotiations team.

13. Ms. Krahl retired and her pension benefits have not been adjusted to include the retroactive wages increases. None of the collective bargaining agreements at issue contain any provisions concerning retroactive wages and/or other financial benefits for employees separated from employment.

CONCLUSIONS OF LAW

1. Benefits for retirees or other non-employees do not constitute a mandatory subject of bargaining.

2. A municipal employer has no duty to bargain with a union representing current employees on the subject of retroactive wages for non-employees.

rights of non-employees. This Board has consistently ruled that a prohibited practice cannot be found when the action affects only non-employees. Issues concerning only non-employees are not mandatory subjects of bargaining. ***West Hartford,*** *supra;* ***City of Hartford,*** Decision No. 3330 (1995); ***City of New London,*** Decision No. 3189 (1994). Only when the action involves the rights of current employees about their future benefits have we taken jurisdiction over the claim. See: ***Plainfield Board of Education,*** Decision No. 4150 (2006).

To the extent that the Union is making an argument regarding breach of the collective bargaining agreement, that is also a claim outside our jurisdiction. As the Supreme Court stated in ***Pittsburgh Plate Glass,*** *supra*: "The remedy for a unilateral mid-term modification to a permissive term lies in an action for breach of contract...not an unfair labor practice." ***Id*** at 188.

We are troubled by one aspect of this matter. That is the information given to Ms. Krahl while she was planning her retirement. While we do not have any jurisdiction to remedy Ms. Krahl's retirement benefits, we hope that the parties will endeavor to find a solution to the issue of Ms. Krahl's retirement benefits if they have not already done so.

The Town's Motion to Dismiss the Union's complaints is granted. We do not find a basis to conclude that the Union's pursuit of these complaints was undertaken in bad faith. As such, we also dismiss the Town's complaints against the Union.

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 complaints filed herein be, and the same hereby are, **DISMISSED.**

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John W. Moore, Jr.
John W. Moore, Jr.
Chairman

Patricia V. Low
Patricia V. Low
Board Member

Wendella A. Battey
Wendella A. Battey
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 3rd day of October, 2008 to the following:

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