UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CHRISTINE PAOLLILO, Plaintiff,	:	
V.	:	CASE NO. 3:00CV1276(RNC)
CITY OF NEW HAVEN, ET AL., Defendants.	:	

RULING AND ORDER

Plaintiff, a former employee of the City of New Haven, brings this action against the City claiming that her employment was terminated in violation of the Americans with Disabilities Act and the Age Discrimination in Employment Act. Calling on the Court to exercise its supplemental jurisdiction under 28 U.S.C. § 1367, plaintiff also sues the New Haven Management and Professional Union ("Union") under the Connecticut Municipal Employees Relations Act ("MERA") claiming that the Union failed to file a grievance on her behalf in violation of the duty of fair representation. The Union has moved to dismiss on the grounds that plaintiff has failed to state a claim for breach of the duty of fair representation and that, in any event, the claim is barred by the statute of limitations, which the Union argues should be six months.[1] The

[1] The Union also moved to dismiss on the ground that the Court lacked subject matter jurisdiction over plaintiff's claim, which at the time of the motion was based on the federal Labor Management Relations Act ("LMRA"), because municipal employers are exempt from the LMRA. Plaintiff's intervening amended complaint asserts the fair representation charge under the MERA.

motion is granted because the Court declines to exercise supplemental jurisdiction over the claim against the Union due to the novelty and complexity of the statute of limitations question.

Facts

Plaintiff alleges that she was discharged from her employment with the City after failing to attend a pretermination hearing held on July 10, 1997, at 10 a.m. She did not attend the hearing because she did not receive notice of it until the afternoon of July 10, when her son signed for a certified letter informing her of the hearing. She asked a Union official for assistance in pursuing a grievance or other remedy to protest the lack of notice. However, the official refused to assist her on the ground that she had retained a lawyer. Plaintiff explained to the official that the lawyer's representation was limited to pursuing a federal claim against the City and did not extend to Union-related affairs. The official nevertheless refused to represent plaintiff or initiate a grievance. See Compl. ¶¶ 19-25.

Discussion

Failure to State a Claim

Borrowing from U.S. Supreme Court case law, the Connecticut Supreme Court has held that the duty of fair representation requires the Union "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion in complete good faith and honesty, and to avoid arbitrary conduct." Labbe v. Pension Comm'n of City of Hartford, 239 Conn. 168, 194

(1996)(quoting Vaca v. Sipes, 386 U.S. 171, 177 (1967)). "A union breaches this duty if it acts arbitrarily, discriminatorily or in bad faith." Labbe, 239 Conn. at 194. A union's actions are arbitrary "only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness . . . as to be irrational. Furthermore, a union's actions are in bad faith if the union acts fraudulently or deceitfully or does not act to further the best interests of its members." Id. at 195 (quotations and citations omitted).

Crediting the allegations of the complaint, plaintiff sought union representation for a grievance after she was terminated for failing to attend a hearing of which she had no prior notice. The Union told her that it would not represent her because she had an attorney and it maintained that position even after she explained that the attorney had been retained solely for other matters. The Union's position has sufficient indicia of arbitrariness to survive a motion to dismiss. As the Second Circuit has stated,

> [i]ncluded in the union's duty of fair representation "is the fair and prompt consideration and, if dictated by controlling legal standards, processing on behalf of employees of their claims under contract dispute resolution procedures."

Cruz v. Local Union No. 3 of IBEW, 34 F.3d 1148, 1153 (2d Cir. 1994) (quoting Ames v. Westinghouse Elec. Corp, 864 F.2d 289, 293 (2d Cir. 1988)). Defendant points out that neither failure to process a

meritless grievance nor negligent processing of a grievance violates the duty of fair representation. Here, however, the Union intentionally (not negligently) refused to represent plaintiff before making any assessment (erroneous or not) of the merits of her complaint.

Statute of Limitations

The Union contends that even if the plaintiff has stated a claim under the MERA for breach of the duty of fair representation, the claim is barred by the statute of limitations. While the MERA expressly establishes the duty of fair representation, see C.G.S. § 7-468(d), it contains no statute of limitations.[2] Nor do the regulations of the State Board of Labor Relations contain any limitation period. See Conn. Agencies Regs. §§ 3-101-1 et seq.; §§ 7-471-1 et seq. The Union asks the Court to adopt the six-month limitation period applied to fair representation claims under federal law.

The six-month federal statute of limitations was established by the U.S. Supreme Court in DelCostello v. Teamsters, 462 U.S. 151 (1983). The Court rejected the usual practice of adopting the most analogous state statute of limitations and instead found it appropriate to adopt the six-month limitation on filing unfair labor practices charges provided by § 10(b) of the National Labor

[2] Nor does it contain an express private right of action for breach of the duty of fair representation. It does make breach of the duty a "prohibited act," see C.G.S. §7-470(b)(3), and it provides that complaints of prohibited practices can be brought before the State Board of Labor Relations, see C.G.S. § 7-471(5).

Relations Act, 29 U.S.C. § 160(b). The Court found that the § 10(b) limit was designed by Congress to balance the interest in prompt resolution of labor disputes against the interests in protecting employees' ability to recover. See id. at 168-69. The Court found that state analogues were either too long or too short.[3]

The statute of limitations issue in this case has not been adequately addressed by the parties. The Union raises but does not fully brief the issue and the plaintiff has not even acknowledged that the issue exists. Perhaps the paucity of the briefing is due to the silence of Connecticut statutory and case law on the issue. The novelty and complexity of the state law question, revealed by

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[3] The precise holding of DelCostello was that the six month deadline would apply to a hybrid suit against an employer and a union under § 301 of the LMRA, 29 U.S.C. § 185, and the duty of fair representation, respectively. Since DelCostello, the Second Circuit and apparently at least seven others have held that the six-month rule applies to fair representation claims standing alone. See Eatz v. DME Unit of IBEW Local 3, 794 F.2d 29, 33 (2d Cir. 1986).

DelCostello, which was two cases consolidated, rejected various state statutes of limitations urged on the Court. In one of the cases, the lower courts selected Maryland's thirty-day limitation for actions to vacate an arbitration award over that State's three-year limitation for actions on contracts. In the other case, the Second Circuit selected New York's six-year limitation for actions on contracts, reversing the district court's selection of that State's ninety-day limit on actions to vacate arbitration awards. The focus on the limitation for arbitration cases stems from the Supreme Court's prior holding in United States Postal Service v. Mitchell, 451 U.S. 56 (1981), that, as between a state's limitations period for contract claims and the period for actions to vacate arbitration awards, the latter better applied to hybrid actions (or at least to the employee-versus-employer half of the hybrid). In DelCostello, the Court rejected all state law options (not only the contract and arbitration limits mentioned but also the legal malpractice limit urged by Justice Stevens in dissent) and opted for the NLRA limit.

the Court's own research, strongly counsels against the Court's discretionary exercise of its supplemental jurisdiction over the state law claim. See 28 U.S.C. § 1367(c)(1).[4]

The following are among the questions this Court would be called on to answer—to guess at, really—if it were to exercise supplemental jurisdiction here. A preliminary question is whether the Connecticut Supreme Court, if called on to select a statute of limitations in this case, would look to federal law. As noted above, the Connecticut Supreme Court has fleshed out the substance of the duty of fair representation by borrowing heavily from U.S. Supreme Court case law. See Labbe.[5] However, on the question whether exhaustion of administrative remedies is required for claims of breach of the duty of fair representation, the Superior Courts of Connecticut appear to diverge from the federal rule. Compare Matejek v. AFSCME, 2001 WL 359701 (Conn. Super. Ct. March 29, 2001) (fair

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[4] It is not readily apparent that the fair representation claim is "so related to the claims [against the City] that they form part of the same case or controversy under Article III"––the prerequisite for supplemental jurisdiction. See 28 U.S.C. § 1367(a). However, even assuming that the claims are part of the same case or controversy for Article III purposes, their apparent individuality means there is not a strong interest in conserving judicial and litigant resources weighing against the Court's reluctance to make state law.

[5] Connecticut courts construing the State's labor statutes rely heavily on judicial interpretations of the NLRA because the state laws are "closely patterned" after the federal act and the language is "essentially the same." Winchester v. Connecticut State Board of Labor Relations, 402 A.2d 332, 335-36, 175 Conn. 349 (Conn. 1978) ("The judicial interpretation frequently accorded the federal act is of great assistance and persuasive force in the interpretation of our own act." (quotation omitted)).

representation claim must be exhausted unless facts demonstrate that applying to Board of Labor Relations for relief would be futile or Board is not authorized to provide the relief sought) with Czosek v. O'Mara, 397 U.S. 25, 27-28 (1970) ("[S]urely it is beyond cavil that a suit against the union for breach of its duty of fair representation is not . . . subject to the ordinary rule that administrative remedies should be exhausted before resort to the courts.")

Second, assuming the Connecticut Supreme Court would look to federal law for guidance on the statute of limitations issue, it is unclear whether it would adopt the holding of DelCostello and its progeny—i.e., apply a six-month limitation—or the reasoning of those cases—i.e., look to the limitation period in the labor relations act for claims of unfair labor practices. Notably, the Connecticut Labor Relations Act, C.G.S. §§ 31-107, does not contain a time limitation on filing complaints.

Finally, it is unclear whether the Connecticut Supreme Court would apply general rules for selecting statutes of limitations in the face of legislative silence and, if so, how any such rules would be applied in this particular context.

Because the statute of limitations question is a novel and complex matter of state law, this is an inappropriate case for exercising supplemental jurisdiction. See 28 U.S.C. § 1367(c)(1).

Conclusion

In accordance with the foregoing, the Union's motion to dismiss is granted. The claim against the Union is dismissed without prejudice to plaintiff refiling it in state court. This action will proceed against the City only.

So ordered.

Dated at Hartford, Connecticut, this 23rd day of May 2001.

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Robert N. Chatigny
United States District Judge