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SUPERIOR COURT OF CONNECTICUT
The Judicial District of New Haven

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
LOCAL 825,

Plaintiff,

v.

UNIFORMED PROFESSIONAL FIRE FIGHTERS
ASSOCIATION OF CONNECTICUT, INC.,

Defendant.

Case No. NNH-CV-18-6078502-S

**PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANT'S MOTION TO
STRIKE**

September 12, 2018

Pursuant to Connecticut Practice Book section 10-40, Plaintiff, International Association of Fire Fighters, Local 825 ("Local 825"), by and through its undersigned attorneys, files this Memorandum of Law in opposition to Defendant's, Uniformed Professional Fire Fighters of Connecticut, Inc.'s ("UPFFA") Motion to Strike Revised Amended Complaint, Doc. No. 120.00.

RELEVANT PROCEDURAL BACKGROUND

Local 825 filed this action against UPFFA on March 5, 2018. Doc. No. 100.31. UPFFA filed a request to revise Local 825's amended complaint May 16, 2018, Doc. No. 109.00, and Local 825 filed its revised amended complaint May 24, 2018, Doc. No. 110.00. This is the operative complaint in this action.

On June 25, 2018, UPFFA filed a motion for an extension of time to plead Local 825's revised amended complaint, requesting a filing date of "up to and including July 25, 2018," stating as the reason for the requested 30-day extension that UPFFA needed the additional time to

“investigate and prepare a responsive pleading” because the “Revised Amended Complaint contain[ed] seventy (70) paragraphs regarding complex issues and attache[d] portions of two lengthy Constitutions and By-Laws.” Doc. No. 113.00. Local 825 did not oppose said request. UPFFA’s request for an extension to plead was granted. Doc. No. 113.10.

On July 25, 2018, UPFFA filed another motion for a 30-day extension of time to plead to Local 825’s revised amended complaint, stating that it needed the additional 30 days to “determine whether [Local 825 had] failed to include a necessary and indispensable party to this action.” Doc. No. 115.00. The Court granted an extension to plead until August 13, 2018, per the agreement of the Parties. Doc. No. 115.10.

UPFFA filed its motion to strike Local 825’s revised amended complaint on August 13, 2018, Doc. No. 120.00, accompanied by its supporting memorandum of law, Doc. No. 121.00. As such, pursuant to Connecticut Practice Book section 10-40, this memorandum of law in opposition to UPFFA’s motion to strike is timely and properly filed.

RELEVANT FACTS¹

Local 825 is a local union affiliate of the International Association of Fire Fighters (“IAFF”). Revised Am. Compl. (“Revised Compl.”) ¶ 8, Doc. No. 110.00. However, IAFF allows its affiliates to have its own unique relationship with state affiliate unions and, more specifically, does not require affiliate local unions, including Local 825, to affiliate with UPFFA. Revised Compl. Count 1 ¶¶ 12–

¹ When there is a motion to strike, the “trial court is to examine the complaint, construed in favor of the plaintiffs,” *Szczapa v. United Parcel Serv., Inc.*, 56 Conn. App. 325, 328 (2000), and “the moving party admits all facts well pleaded” in the complaint. *RK Constructors, Inc. v. Fusco Corp.*, 231 Conn. 381, 383 n.2 (1994) (citations omitted).

13. In fact, Local 825 has chosen at certain times since UPFFA's founding to neither be affiliated with UPFFA nor pay any dues to UPFFA. Revised Compl. Count 1 ¶ 14. Local 825 neither needed IAFF's consent to join UPFFA, nor did UPFFA need IAFF's consent to accept Local 825 as one of its local union affiliates and charge Local 825 dues.

In or about 2006, Local 825 decided to pay UPFFA for legislative services. Revised Compl. Count 1 ¶ 19; Aff. of Frank Ricci in Supp. of Plaintiff's Mem. of Law in Opposition to Def.'s Mot. to Strike ("Ricci Aff." attached as Exhibit A) ¶ 5, Sept. 12, 2018. But Local 825 did not agree to become a UPFFA full member or pay full UPFFA full member dues at that or at any other subsequent time. Revised Compl. Count 1 ¶ 18; Ricci Aff. ¶ 5.

According to UPFFA's constitution and by-laws, local unions that pay only for legislative services have reduced rights, including voting rights, and are only allowed to vote on UPFFA business involving "legislative issues, political endorsements, PAC fund budget, and distribution of PAC fund donations." Revised Compl. Count 1 ¶¶ 21–23, 31–32. It was Local 825's good faith belief that from the time it began paying UPFFA for legislative services until the day Local 825 disaffiliated from UPFFA, UPFFA was using Local 825's monthly legislative only payments to pay only for legislative services and activities that enured to the benefit of Local 825. *See* Revised Compl. Count 1 ¶¶ 24–27, 38; Ricci Aff. ¶ 6.

On January 4, 2016, Local 825's executive board voted by unanimous consent to terminate its legislative only UPFFA membership and to formally disaffiliate from UPFFA. Revised Compl. Count 1 ¶ 41. After so doing, Local 825's president, Frank Ricci, sent written notice to UPFFA's president, Peter S. Carozza, Jr., notifying him of Local 825's executive board's vote to disaffiliate

from the UPFFA. Revised Compl. Count 1 ¶¶ 2, 42. Through e-mail, Mr. Carozza acknowledged receipt of Mr. Ricci's notice writing that he was in "receipt of President Ricci's email notifying [him] of Local 825's withdrawal from affiliation with the Uniformed Professional Fire Fighters of Connecticut." Revised Compl. Count 1 ¶¶ 2, 44. Mr. Carozza then "request[ed] that [Local 825] reconsider [its] decision." Revised Compl. Count 1 ¶ 44.

From January 4, 2016, to March 2018, UPFFA made several attempts to convince Local 825 to re-affiliate with UPFFA. *See* Revised Compl. Count 1 ¶¶ 45–49; Ricci Aff. ¶ 8. Often, an IAFF representative would be involved to facilitate the meeting between the two sides, but said representative was never there to participate as an aggrieved party. Ricci Aff. ¶ 9. At these meetings, Mr. Ricci would ask Mr. Carozza and other UPFFA representatives to provide him with the documentation to show that Local 825 could not disaffiliate from UPFFA, but the UPFFA never provided such documents. Revised Compl. Count 1 ¶¶ 51–52; Ricci Aff. ¶ 10.

In or about December 2017, UPFFA retained a collections agency, Recovery Solutions Group ("RSG"), to pursue collections against Local 825 for legislative only dues that UPFFA alleged Local 825 owed for the time period after Local 825 disaffiliated from UPFFA. Revised Compl. Count 1 ¶ 56. RSG recommended that UPFFA take legal action against Local 825, Revised Compl. Count 1 ¶ 64, and at that time to protect its interests, Local 825 filed the above captioned action.

Although not named as a party in this action, IAFF was on notice of this action as early as, if not before, March 8, 2018, just three days after this action was filed. Ricci Aff. ¶ 11.

ARGUMENT

“The purpose of a motion to strike is to challenge the legal sufficiency of a pleading.”

Szczapa v. United Parcel Serv., Inc., 56 Conn. App. 325, 328 (2000) (citations omitted). Such a motion can challenge the legal sufficiency of a complaint based upon, among other things, the “absence of any necessary party.” Conn. Prac. Book § 10-39(a)(3).

Again, when there is a motion to strike, the “trial court is to examine the complaint, construed in favor of the plaintiffs,” *Szczapa*, 56 Conn. App. at 328, and “the moving party admits all facts well pleaded” in the complaint. *RK Constructors, Inc. v. Fusco Corp.*, 231 Conn. 381, 383 n.2 (1994) (citations omitted). “If facts provable under the allegations would support a defense or a cause of action, the motion to strike must be denied.” *Id.* at 384 (citation omitted). Finally, “the court is permitted to look at facts outside the pleadings when the basis of a motion to strike is for nonjoinder.” *Anamasi v. State, Judicial Branch*, Superior Court, Judicial District of Hartford, No. CV054016000S, 2006 WL 1999214, at *1 (June 27, 2006) (Tanzer, J.) (copy of opinion attached hereto as “Exhibit B”) (citation omitted).

I. IAFF IS NOT A NECESSARY PARTY TO THIS ACTION AND, AS SUCH, THE COURT SHOULD DENY UPFFA’S MOTION TO STRIKE

IAFF is not a necessary party to this action. It will not have its interests or rights substantively affected by the Court’s decision in this matter. Instead, the Revised Complaint and its well pled facts—particularly when construed in favor of Local 825—evidence that this Court can fully adjudicate the rights of the existing parties without affecting IAFF’s rights or interests.

The Connecticut Supreme Court has defined a necessary party

as [p]ersons having an interest in the controversy, and who ought to be made parties,² in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it [B]ut if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties.

Sturman v. Socha, 191 Conn. 1, 6–7 (1983) (citations omitted).

Local 825's Revised Complaint contains four counts. The first count requests declaratory relief reaffirming that Local 825 properly disaffiliated from UPFFA. Revised Compl. Count 1 ¶¶ 1–68. The second (UPFFA's breach of fiduciary duty, Revised Compl. Count 2 ¶¶ 1–74), third (UPFFA's negligent misrepresentation, Revised Compl. Count 3 ¶¶ 1–71), and fourth (UPFFA's innocent misrepresentation, Revised Compl. Count 4 ¶¶ 1–70) counts focus solely on UPFFA's services, descriptions, and actions taken on behalf of and towards Local 825 and, as such, are clearly separable from, and unrelated to, IAFF.

As to the first count of Local 825's Revised Complaint, UPFFA alleges that “[p]rocedures for disassociation from the State Union appear in several places.”² Mem. of Law in Supp. of Mot. to Strike Revised Am. Compl. (“UPFFA's Mem. of Law”) 3, Doc. No. 121.00. Without referencing any specific provisions, UPFFA alleges that steps and deadlines for such procedures are contained in UPFFA's policy manual and that UPFFA's policy manual is incorporated by reference into UPFFA's constitution and by-laws. UPFFA Mem. of Law 3–4. UPFFA then, in an attempt to implicate IAFF

² Local 825 contests UPFFA's allegations concerning the existence of disaffiliation/disassociation procedures for UPFFA local union affiliates.

into the current action,³ points to article XII, section 2 (“section 2”) of IAFF’s constitution and by-laws as containing “an additional procedure for disassociation,” and, which, it alleges, is also incorporated into UPFFA’s constitution and by-laws.⁴ UPFFA Mem. of Law 4.

Local 825 has never alleged that IAFF’s constitution and by-laws relate to Local 825’s decision to disaffiliate from UPFFA. On its face, said IAFF constitution and by-laws’ provision that UPFFA alleges is controlling upon Local 825’s disaffiliation cannot be understood to be binding upon Local 825’s disaffiliation. Based upon the well-pled facts of Local 825’s revised complaint, which, for purposes of a motion to strike, UPFFA must admit as true and this Court view in a light favorable to Local 825, Local 825 neither sought to dissolve itself or the UPFFA; nor did it seek to forfeit a UPFFA charter, as there was no charter to forfeit. *See* Revised Compl. ¶¶ 16, 41. IAFF, therefore, has no legitimate interest in this action as this Court does not need to determine how section 2 applies in this action, and, quite frankly, any action this Court takes in this matter to provide the requested relief sought by Local 825, will have no impact upon IAFF’s rights or interests. Because neither a forfeiture of charter nor dissolution of a local or statewide affiliate is at issue, per the well-pled facts of Local 825’s revised complaint, the IAFF constitution and by-laws provision is wholly inapplicable, and this Court will not have to pass judgment on said provision. As

³ In an apparent attempt to involve IAFF as a necessary party in this action, UPFFA’s Memorandum of Law notes that charges—filed by UPFFA—are pending before the IAFF against officers of Local 825 for the very issues presented in this action and, in effect, for bringing this very action and certain matters surrounding the same. *See* UPFFA’s Mem. of Law 4–5. Local 825 filed a motion asking this Court for a temporary injunction against UPFFA, which would not affect IAFF’s rights. Local 825 has simply asked that UPFFA be enjoined from further pressing its charges against Local 825’s officers until this action has concluded. Mot. for Temporary Inj. 12.

⁴ Article XII is entitled “Dissolution” and Section 2 “Voluntary Forfeiture of Charters and Dissolution of Local Unions or Other Subordinate Bodies.” UPFFA Mem. of Law Ex. C.

such, IAFF is not a necessary party to this action because the Court can provide complete and final justice in this matter without affecting the rights of IAFF.

II. IAFF HAD NOTICE OF THE CURRENT ACTION AND COULD INTERVENE IF IT BELIEVES ITS RIGHTS OR INTERESTS ARE AT STAKE

IAFF has had notice of this action since at least March 8, 2018, just three days after it was filed. Ricci Aff. ¶ 11. If IAFF determined its rights or interests were endangered by this action, it could intervene in this matter pursuant to section 52-102 of the Connecticut general statutes.⁵ Despite having full knowledge of this action, IAFF has chosen to stay on the sideline. This Court should not grant UPFFA's motion to strike merely because UPFFA thinks that IAFF should have a proverbial seat at the table in this litigation. IAFF is capable of making that decisions for itself.

III. UPFFA COULD MOVE THIS COURT TO ADD IAFF TO THIS MATTER

Similarly, under section 52-102 of the Connecticut general statutes, UPFFA could move this Court for an order adding IAFF as a party to this action while allowing this matter to continue moving forward. If UPFFA's only goal is to add IAFF to this matter, doing so by a motion filed pursuant to section 52-102 is the proper vehicle to accomplish that goal.

⁵ Section 52-102 of the Connecticut general statutes states that

Upon motion made by any party or nonparty to a civil action, the person named in the party's motion or the nonparty so moving, as the case may be, (1) may be made a party by the court if that person has or claims an interest in the controversy, or any part thereof, adverse to the plaintiff, or (2) shall be made a party by the court if that person is necessary for a complete determination or settlement of any question involved therein; provided no person who is immune from liability shall be made a defendant in the controversy.

CERTIFICATE OF SERVICE

I certify that, on this date, a copy of the foregoing Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Strike was sent to the below counsel of record:

John M. Gesmonde
Nancy E. Valentino
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Dated: September 12, 2018

By:

 //s// Craig C. Fishbein, Esq. 420267

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SUPERIOR COURT OF CONNECTICUT
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INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
LOCAL 825,

Plaintiff,

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UNIFORMED PROFESSIONAL FIRE FIGHTERS
ASSOCIATION OF CONNECTICUT, INC.,

Defendant.

Case No. NNH-CV-18-6078502-S

**AFFIDAVIT OF FRANK RICCI IN SUPPORT OF PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO DEFENDANT'S MOTION TO STRIKE**

I, Frank Ricci, being duly sworn, hereby depose and state as follows:

1. I am over the age of 18, and I understand the obligation of an oath;
2. I have personal knowledge of the facts stated herein;
3. I am and have been the president of International Association of Fire Fighters, Local 825 ("Local 825") since January 1, 2016.
4. Local 825 is a local affiliate of the International Association of Fire Fighters ("IAFF").
5. Local 825 decided to pay legislative only dues to the Uniformed Professional Fire Fighters Association of Connecticut ("UPFFA") sometime around 2006 for UPFFA's legislative services. Local 825 did not join UPFFA as a full member and has not joined UPFFA as a full member subsequent to 2006.
6. It was my and Local 825's good faith belief that, in exchange for Local 825 paying UPFFA legislative only dues, UPFFA would use Local 825's legislative only dues to engage its

experience and expertise in legislative affairs to further UPFFA's and Local 825's legislative interests and to be a resource at the state capital.

7. On January 4, 2016, Local 825's executive board voted unanimously to disaffiliate from the UPFFA.

8. From the time Local 825 disaffiliated from UPFFA on January 4, 2016, to just before filing this action in March of 2018, UPFFA made several attempts to convince Local 825 to re-affiliate with UPFFA.

9. Jay Colbert, the Third District Vice President of the IAFF and IAFF's direct contact for local unions within the Third District, including Local 825, met with and tried to facilitate additional meetings for officials from Local 825 and UPFFA in an attempt to help the two sides work out their disagreement. But Mr. Colbert has never indicated that IAFF has any rights at stake in this action.

10. Several times during meetings with UPFFA president Peter Carozza and other UPFFA officials, I have asked UPFFA to provide me with a copy of any fee agreement or membership agreement signed by Local 825 between Local 825 and UPFFA, which would prevent Local 825 from disaffiliating from UPFFA. Neither he, nor anyone else, has ever produced such a document to me.

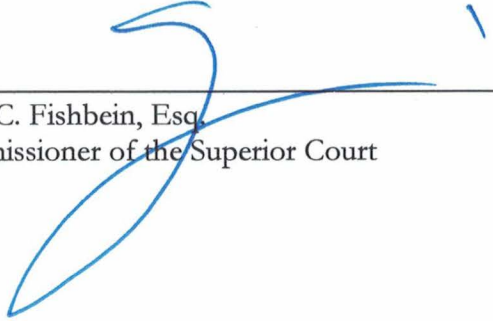
11. Local 825 filed this action on March 5, 2018. On March 8, 2018, Mr. Colbert and I exchanged emails which, in part, discussed this action filed against UPFFA, based upon Local 825 and UPFFA's disagreement over Local 825's disaffiliation.



Frank Ricci
IAFF, Local 825, President

STATE OF CONNECTICUT)
 •) ss: Wallingford
COUNTY OF NEW HAVEN)

On the 12th day of September, 2018, before me personally appeared Frank Ricci, known to me to be the same person described in the above Affidavit, and who has executed the same, acknowledging that to be his free act and deed, before me.



Craig C. Fishbein, Esq.
Commissioner of the Superior Court