CONNECTICUT DEPARTMENT OF LABOR
Partner of the American Job Center Network

BOARD OF LABOR RELATIONS

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August 23, 2023

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RE: Hartford Federation of Teachers,
Local 1018, AFT, AFL-CIO
-And-
John Grande

Decision No. 5291
Case No. TUPP-34,731

Dear Counsel:

Enclosed please find the Decision and Order issued by the Connecticut State Board of Labor Relations in the above-captioned matter.

Sincerely,

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Frank N. Cassetta, General Counsel
FNC: jc

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

HARTFORD FEDERATION OF TEACHERS,
LOCAL 1018, AFT, AFL-CIO

DECISION NO. 5291

-and-

AUGUST 23, 2023

JOHN GRANDE

Case No. TUPP-34,731

A P P E A R A N C E S:

Attorney Eric W. Chester
Attorney Timothy O'Flynn
for the Union

Attorney Logan M. Hetherington
Attorney Craig C. Fishbein
for the Complainant

DECISION AND ORDER

On July 19, 2022, John Grande (the Complainant) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), alleging that the Hartford Federation of Teachers, Local 1018, AFT, AFL-CIO (the Union) violated the School Board – Teacher Negotiation Act (TNA or the Act) by refusing to take his grievance to arbitration because he is not a dues-paying member.[1]

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on February 21, 2023. Both parties appeared, were represented by counsel,

[1] The complaint further alleged that the Hartford Board of Education (the School Board) conspired with the Union to interfere with the Complainant's rights. However, on January 23, 2023, the Labor Board granted the School Board's motion to dismiss that claim and the School Board is no longer a party in this case. On February 8, 2023, the Complainant filed notice of intent to appeal that ruling.

and allowed to present evidence, examine and cross-examine witnesses, and make argument. Both parties filed post-hearing briefs on April 24, 2023 and reply briefs, the last of which was received on May 12, 2023. Based on the entire record before us, we find the following facts and conclusions of law and issue the following order.

FINDINGS OF FACT

1. The School Board is a local or regional board of education within the meaning of the Act.

2. The Union is an organization of certified professionals within the meaning of the Act and at all relevant times has been the bargaining representative for teachers employed by the School Board.

3. At all times relevant hereto, the Union and the School Board were parties to a collective bargaining agreement, effective July 1, 2019 through June 30, 2022, which included a three-step[2] grievance-arbitration procedure, which stated, in relevant part:

> ARTICLE 3 - GRIEVANCE PROCEDURE
>
> ***
>
> Step 3: In the event that the grievance is not settled at Step 1 or Step 2, then the Union may seek arbitration of the grievance. No bargaining unit member may file for arbitration as an individual, but only the Union may file an appeal to arbitration hereunder. The Union's request for arbitration shall be in writing and must be filed with the applicable arbitration agency ... within ten (10) work days after the receipt of the ... decision at Step 2 or not later than ten (10) work days following the expiration of the time limits for making such a decision, whichever shall occur first. All grievances filed for arbitration shall be submitted to the American Arbitration Association.
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> ***

(Ex. C1).

4. At all times relevant hereto, the Complainant was an elementary school physical education teacher working for the Hartford Public Schools. Prior to 2018, the Complainant was a dues-paying member of the Union.

[2] At steps 1 and 2, respectively, the employee or the Union submits the grievance to the employee's s immediate supervisor and the superintendent of schools. However, only the Union can proceed to step 3, which is grievance arbitration. (Ex. C1).

5. On June 27, 2018, the United State Supreme Court issued ***Janus v. AFSCME, Council 31***, 138 S.Ct. 2448 (2018).[3]

6. In 2018, the Complainant ceased paying dues to the Union.

7. On December 10, 2021, the School Board issued a written reprimand to the Complainant. (Ex. R2).

8. On November 14, 2021, the Complainant filed a grievance, alleging that the written reprimand was issued in violation of the collective bargaining agreement. The Union represented the Complainant at the first 2 steps of the grievance procedure. However, the School Board denied the grievance at both steps.

9. On February 24, 2022, the Complainant emailed Union first vice president Corey Moses regarding arbitrating his grievance, stating:

> As I predicted central office was going to rule against me in the grievance. I'm extremely confident I will prevail in arbitration. Is there anything I need to do prior to filing for arbitration?
>
> ***

(Ex. C5).

10. On March 1, 2022, Moses responded to the Complainant's request for arbitration, stating:

> Thank you for reaching out. We support all members to step two of the grievance process. The use of arbitration is reserved for dues-paying members. You are more than welcome to use your personal legal services should you wish to continue with this process. I was happy to support you in this process. If you need copies of anything from this matter please let me know. Take care.
>
> ***

Later that day, the Complainant replied, in relevant part:

> [W]ould I be eligible to take my case to arbitration if I re-joined the … [U]nion? Or is it too late at this point?
>
> ***

(Ex. C5).

[3] ***Janus***, supra, overruled ***Abood v. Detroit Board of Education***, 431 U.S. 209 (1976), and held that the First Amendment prohibits compulsory payment of union dues or agency fees by a public sector employee absent the employee's affirmative consent.

11. In an email to the Complainant dated March 2, 2022, Moses stated:

> You are free to join the [U]nion when you are ready to, but the filing process for arbitration includes the date you joined the [U]nion and the date the incident occurred. At the beginning of this process and the occurrence, you are not a dues-paying member so it would not fall under that category. For this occurrence, you are correct it is too late. If we can support you in any other way please let us know.
>
> ***

(Ex. C5).

12. On August 23, 2022, after the Complainant filed the instant complaint and after the time in the contract for filing for arbitration had expired, the Union filed for arbitration of the Complainant's grievance with the American Arbitration Association (AAA). The AAA assigned the matter number 01-22-0003-5972. The Union represented the Complainant at arbitration.

13. On May 16, 2023, the arbitrator in AAA Case No. 01-22-0003-5972 issued an award denying the grievance because it was not filed within the time limits for arbitration in the collective bargaining agreement.[4] (Ex. C11).

CONCLUSIONS OF LAW

1. It is a prohibited practice for a union or its agents to breach the duty of fair representation owed to all its members by engaging in conduct that is arbitrary, discriminatory, or in bad faith.

2. It is a prohibited practice for a union or its agents to interfere with, restrain or coerce employees in the exercise of rights guaranteed by the Act.

3. The Union breached the duty of fair representation by refusing to submit the Complainant's grievance to arbitration because he is not a dues-paying member.

4. The Union interfered with, restrained or coerced the Complainant's exercise of protected rights by refusing to submit his grievance to arbitration because he is not a dues-paying member.

DISCUSSION

The Complainant argues that the Union breached the duty of fair representation and interfered with his rights to refrain from joining or assisting the Union under §§ 10-

[4] The evidentiary portion of this case was closed when the arbitrator issued the award in AAA Case No. 01-22-0003-5972. The Complainant filed a motion to reopen the record to admit the award on May 23, 2023 and the Labor Board granted that motion on May 26, 2023. (Exs. C12, C13, C14).

153e(c)(1)(A) and (3)[5] of the Act when Moses refused to submit his grievance to arbitration because the Complainant was not a dues-paying member.

The Union admits Moses' conduct, but argues that it did not violate the Act since Moses was not motivated by hostility. Rather, the Union argues, Moses made a tactical error due to his relative inexperience which did not rise to the level of a prohibited practice. In addition, the Union argues that all practical remedies have been granted because all of its officers have since received training and the Union has established a grievance committee to consider the merits of every grievance regardless of membership status.[6] Based on the entire record before us, we find that the Union violated the Act.

Duty of fair representation

A union owes a duty of fair representation to all employees in the bargaining unit without regard to membership. ***Administrative and Residual Employees Union, Local 4200 (Gagne & Wallett)***, Decision No. 5214 (2022), appeal dismissed, ***Gagne v. Connecticut State Board of Labor Relations***, Superior Court, judicial district of New Britain, Docket No. CV22-6153449-S (April 10, 2023); see also ***Janus v. AFSCME Council 31***, supra, 138 S.Ct at 2469; ***DelCostello v. International Brotherhood of Teamsters***, 462 U.S. 151, 164 (1983).

> The duty of fair representation under federal law arises from a union's legal status as exclusive employee representative that necessarily entails "a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." ***Vaca v. Sipes***, 386 U.S. 171, 177 (1967).

Hartford Board of Education (Michael Piteau), Decision No. 4935 p. 21 (2016).

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[5] Conn. Gen. Stat. § 10-153e states, in relevant part:

> (c) Any organization of certified professional employees or its agents is prohibited from: (1) Interfering, restraining or coercing (A) certified professional employees in the exercise of the rights guaranteed in this section and sections 10-153a to 10-153c . . .[and] ... (3) breaching its duty of fair representation pursuant to section 10-153a...
>
> ***

Conn. Gen. Stat. § 10-153a states, in relevant part:

> (a) Members of the teaching profession shall have and shall be protected in the exercise of the right to form, join or assist, or refuse to form, join or assist, any organization for professional or economic improvement...
>
> (b) The organization designated as the exclusive representative of a teachers' or administrators' unit shall have a duty of fair representation to the members of such unit.
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> ***

[6] The Union also argued that this case is moot since it ultimately submitted the Complainant's grievance to arbitration. However, given the outcome of that arbitration, we reject the Union's argument.

> The duty of fair representation applies to the exercise of a union's discretion as to whether and how far to pursue a grievance. ***Council 15, AFSCME (George Vivo)***, Decision No. 4990 (2018); ***Local 511 SEIU, CEIU (Raynard Doughty)***, Decision No. 4669 (2013) ... A union "has no obligation to pursue any grievance, or to carry it to arbitration, as long as the decision is not arbitrary, discriminatory, or in bad faith." (Internal quotation marks omitted.) ***Local 1565, Council 4 AFSCME (David Bishop)***, Decision No. 3510 p.4 (1997); see also ***Vaca v. Sipes***, supra, 386 U.S. at 191; ***Local 884, AFSCME (Moore and Antinozzi)***, Decision No. 5025 (2018); ***Teamsters, Local 677 (Ida Singer)***, Decision No. 1141 (1973).

City of New Haven (Jo Lynn Wilson), Decision No. 5209 pp. 7-8 (2021).

We have historically refused to find a violation of the duty unless there is a showing of evident hostility, purposeful discrimination or arbitrariness. ***New Haven Housing Authority (Alvin Lewis)***, Decision No. 2596 (1987); ***City of Bridgeport (Kenneth Brown)***, Decision No. 1963 (1980); ***Hartford Federation of Paraprofessionals (Evonia Manson)*** Decision No. 2418 (1985). ***Norwalk Board of Education and Local 1042, Council 4, AFSCME, AFL-CIO***, Decision No. 3586 (1998), remanded on other grounds, ***Local 1042, Council 4, AFSCME, AFL-CIO v. Connecticut State Board of Labor Relations, et. al.***, 24 Conn. L. Rptr. 616 (June 1, 1999). "In this day and age, discrimination is almost invariably conducted surreptitiously ... [and] direct evidence of discriminatory motive so frequently is unavailable." ***City of Shelton***, Decision No. 5212 p. 9 (2021) and cases cited therein. However, this is one of those rare cases where direct evidence of purposeful discrimination exists. Specifically, Moses candidly admitted in his March 1st email that "arbitration is *reserved for dues-paying members*." (Ex. C5) (Emphasis added).

The Union contends that Moses' conduct did not breach the duty of fair representation because he was not "hostile" towards the Complainant. We disagree. "'[H]ostile discrimination based on irrelevant and invidious considerations' triggers a breach", ***Local 2663 of Council 4 AFSCME, AFL-CIO (Joan O'Rourke)***, Decision No. 5030 (2018), appeal dismissed, ***O'Rourke v. Dep't of Labor***, 210 Conn. App. 836 (2022), and "lack of union membership ... is perhaps as invidious a reason as could be found under the Act." ***Tampa Printing & Graphic Communications Union No. 180***, 238 NLRB 24, 30 (1978); see also ***Jones v. Trans World Airlines, Inc.***, 495 F.2d 790 (2d Cir. 1974). Furthermore, we think that the Union underestimates the inherent hostility in segregating a class of employees because they have ceased to financially support the Union.

In addition, the Union relies on ***Barton v. City of Bristol***, 294 F.Supp.2d 184 (D. Conn. 2003), to argue that Moses merely made a "tactical error" which is "insufficient to show a breach of the duty of fair representation." Id., 294 F.Supp.2d at 202. In ***Barton***, the union intentionally bypassed the second step of the grievance procedure because the employer used a different hearing officer than the one designated in the contract. The Union had done the same in a previous grievance and prevailed at arbitration. However, this time, the arbitrator dismissed the grievance for failure to exhaust the available grievance procedures. The court found that the Union did not violate the duty of fair representation, stating, in relevant part:

> There is no evidence that the Union treated Plaintiff's grievance in a perfunctory fashion, and the fact that the arbitrators rejected the argument that was successful in [another case] does not mean that the Union acted arbitrarily towards Plaintiff. The Union did not believe that it was skipping a step. Its decision was based on its belief that the City had failed to comply with the terms of the agreement. At most the union committed a tactical error...
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> ***

Id.

We believe that ***Barton*** is inapplicable here. Although "errors of tactics or judgment" do not breach the duty of fair representation, ***Local 2663 of Council 4 AFSCME, AFL-CIO (Joan O'Rourke)***, supra, there is a significant difference between employing a previously successful strategy which goes awry and differentiating between bargaining unit employees for an illegitimate reason. ***State of Connecticut (Amadeo)***, Decision No. 3335 (1995) (distinguishing between "error" and an "intent to deny the Complainants of their opportunity to have their grievance heard ... in arbitration"), appeal dismissed, ***David Amadeo v. Connecticut State Board of Labor Relations***, Superior Court, judicial district of New Britain, Docket No. CV 98 04926188 (July 21, 1999). "Because advocacy is an art and not a science ... strategic choices must be respected ... if they are based on professional judgment..." ***Hartford Board of Education (Piteau)***, supra at 28 (quoting ***Strickland v. Washington***, 466 U.S. 668, 681 (1984)). However, discrimination "based on nothing else but union membership is arbitrary and invidious and violates the union's duty to represent fairly all members of the bargaining unit." ***Jones v. Trans World Airlines, Inc.***, supra, 495 F.2d at 797–98.

Interference

The Complainant also contends that the Union interfered with his right to refrain from joining a union in violation of Section 10-153e(c)(1)(A). Complainant's post-hearing brief, pp. 11-12. We agree. "The [TNA]is essentially patterned on the National Labor Relations Act so that federal judicial interpretations of the federal act are of great assistance and persuasive force in the interpretations of it." ***West Hartford Bd. of Educ. v. Connecticut State Bd. of Labor Relations***, 190 Conn. 235, 241 (1983). We concur with our federal counterpart that discriminating against employees solely on the basis of nonmembership necessarily coerces employees in the exercise of a protected right.

> "It is well settled that Section 8(b)(1)(A)[7] of the Act prohibits unions, when acting in a statutory representative capacity, from taking action against any employee

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[7] 29 U.S.C. § 158(b) is substantially similar to our §10-153e(c)(1)(A) and states, in relevant part:

> It shall be an unfair labor practice for a labor organization or its agents— (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title:
>
> ***

29 U.S.C. § 157 states, in relevant part:

upon consideration or upon the basis of classifications that are irrelevant, invidious, or unfair." See ***Steelworkers Local 2869 (Kaiser Steel Corp.)***, 239 NLRB 982, 982-983 (1978). Consistent with this principle, the Board has found that a union violates Section 8(b)(1)(A) when it discriminates against unit employees solely on the basis of their nonmembership status as such discrimination necessarily coerces employees in the exercise of their Section 7 rights to join or refrain from joining a labor organization.

Puget Sound Area Local #298, Affiliated with the Am. Postal Workers Union, AFL-CIO (United States Postal Serv.) & Li Eagle Ransom Am. Postal Workers Union, AFL-CIO (United States Postal Serv.) & Li Eagle Ransom, 352 NLRB 792, 793 (2008) (Footnote added).

Referring to the arbitration clause in the contract, the Complainant also argues that the Union violated Section 10-153(c)(1)(A) by "negotiat[ing] a collective-bargaining agreement that discriminates against nonmember[s]." Complainant's post-hearing brief, p. 12 (quoting ***Janus***, supra, 138 S.Ct. at 2468). However, we find this argument unavailing because it fails to distinguish between negotiating a discriminatory contract provision and discriminatory application of a nondiscriminatory provision. The arbitration clause in the contract does not distinguish between bargaining unit employees based on membership status. (Ex. C1) ("*No bargaining unit member* may file for arbitration as an individual...) (Emphasis added). As such, we base our finding that the Union violated Section 10-153e(c)(1)(A) on Moses' conduct alone and turn to remedy.

Remedy

In this Board's determination of the appropriate remedy, we are guided by the Act which provides broad remedial powers to the Board. Such powers include the issuance of a cease and desist order "and such further affirmative action as will effectuate the policies of [the Act]." Conn. Gen. Stat. § 10-153e(e). In this case, the Complainant seeks an order declaring that the Union committed prohibited practices, requiring the Union to post notices detailing its violations of the Act, directing the Union to undertake periodic training regarding its duty towards nonmembers, ordering the Union and the School Board to proceed to arbitration on the merits of his grievance, and awarding reasonable attorney's fees. Complainant's brief, p. 13.

Since we state herein that the Union violated the Act and describe the nature of those violations with specificity, and since we ordinarily direct the respondent to post a copy of our decision and order in "a conspicuous place where the employees customarily assemble" for 60 days, our usual procedures afford the Complainant his first three requested remedies. Since school may still be in summer recess, however, the 60-day period will be calculated from the

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Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities...

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Id.

date that the 2023-2024 school year begins. Regarding the remaining requested remedies, we decline to order periodic retraining since the Union voluntarily instituted such training and created a standing committee to review each grievance. In our view, these remedial efforts are sufficient to effectuate the policies of the Act regarding nonmembers' rights. We also decline to include in the remedy an order directing the employer and the Union to arbitrate the merits of the Complainant's grievance for the reasons set forth in our January 23, 2023 ruling on the School Board's motion to dismiss. Lastly, we award attorneys' fees and costs, with interest.

> The Act affords us the authority and discretion to award a prevailing party's reasonable attorney's fees and costs where we conclude that a proffered defense presents no debatable issue and is wholly frivolous. ***City of Bridgeport***, Decision No. 4478 (2010); ***Killingly Board of Education***, Decision No. 2118 (1982). If a party only presents defenses that are not reasonably debatable, the other party has been caused to incur expenses for no valid reason. We must carefully examine each of a respondent's defenses to determine whether there is any substance to them. If there is, an award of attorney's fees, costs and interest is not warranted. ***Norwalk Third Taxing District***, Decision No. 3676 (1999) at p. 6-7. ***City of Hartford***, Decision No. 4549 p. 5 (2011), see also ***City of New Haven***, Decision No. 4974 (2017); ***Town of East Hartford***, Decision No. 4907 (2016); ***City of Hartford***, Decision No. 4736 (2014).
>
> ***

City of New London, Decision No. 5205 p. 9 (2021); see also ***Local 1042, AFSCME, Council 4, AFL-CIO v. Connecticut State Board of Labor Relations***, supra ("awarding a prevailing party's costs and expenses is well within the discretion of the board"). In this case, we think the Union's arguments that Moses' conduct was something other than intentional discrimination based on an unlawful consideration present no debatable issue and are wholly frivolous in light of the undisputed facts in this case. As such, we find that an award of reasonable attorney's fees and costs with interest for prosecuting the instant complaint is warranted here.

ORDER

By virtue of and pursuant to the powers vested in the State Board of Labor Relations by the School Board – Teacher Negotiation Act, it is hereby

ORDERED that the Hartford Federation of Teachers, Local 1018, AFT, AFL-CIO shall:

I. Cease and desist from failing to fairly represent the Complainant and interfering with his exercise of rights protected by the Act; and

II. Take the following affirmative steps which the Board finds will effectuate the purposes of the Act:

A. Pay the Complainant his reasonable attorney's fees, costs, and interest, incurred in pursuing prohibited practice complaint TUPP-34,731 before this Board.

B. Post for a period of sixty (60) consecutive days, starting from the first day of the 2023-2024 school year, in a conspicuous place where School Board employees customarily assemble, a copy of this Decision and Order in its entirety; and

C. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the Hartford Federation of Teachers, Local 1018, AFT, AFL-CIO to comply therewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Barbara J. Collins
Barbara J. Collins
Board Member

Katherine C. Foley
Katherine C. Foley
Board Member

Ellen Carter
Ellen Carter
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 23rd day of August, 2023 to the following:

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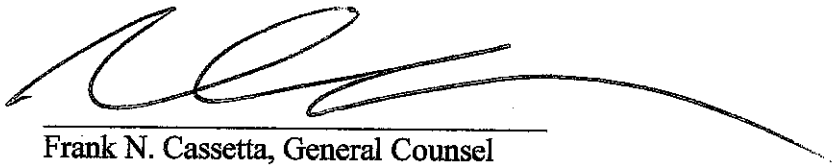

Frank N. Cassetta, General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS