

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
CONNECTICUT EDUCATION ASSOCIATION

DECISION NO. 3689

-and-

APRIL 28, 1999

SUZANNE MERSEREAU SEARLES

Case No. TUPP-18,878

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

Attorney Martin Gould
For the Union

DECISION AND DISMISSAL OF COMPLAINT

On February 10, 1997, Suzanne Mersereau Searles (Complainant or Searles) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Connecticut Education Association (the Union) had committed prohibited practices in violation of § 10-153(e) of the School Board Teacher Negotiation Act (the Act or TNA). Specifically, Complainant alleges that the Union failed to represent her in 1989 and 1990 regarding her discharge from employment with the West Hartford Public Schools.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on February 23, 1999. On February 22, 1999, Complainant contacted Labor Board Agent David E. Johnson requesting that the hearing scheduled for the next day be postponed because she did not have transportation to the hearing. That request was denied by the undersigned Chairman. On February 23, 1999 Complainant again contacted Johnson requesting a postponement, indicating that she was unable to attend the hearing because she was in the hospital. The hearing was opened by the Labor Board and the Union requested that the complaint be dismissed on jurisdictional grounds and on the merits.

Based on the record before us, we make the following findings of fact and conclusions of law and we dismiss the complaint on jurisdictional grounds.

FINDINGS OF FACT

1. The Union is an organization of certified professional employees pursuant to the Act.
2. Complainant's complaint raises allegations concerning events, the most recent of which occurred in 1990.
3. Public Act 93-426 (codified in part at Conn. Gen. Stat. § 10-153a(b) and § 10-153e(c)(3)) went into effect on October 1, 1993, imposing an express duty of fair representation upon exclusive representatives of teachers' and administrators' bargaining units and making it a prohibited practice for an exclusive bargaining representative to breach such duty.

CONCLUSIONS OF LAW

1. Public Act 93-426 does not have retroactive effect.
2. The Labor Board does not have jurisdiction over the complaint because the alleged misconduct pre-dates the effective date of Public Act 93-426.

DISCUSSION

Conn. Gen. Stat. § 55-3 provides: "Limitation of effect of certain acts. No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have a retrospective effect." There is a presumed legislative intent that statutes affecting substantive rights shall apply prospectively only. See *Coley v. Camden Associates, Inc.*, 243 Conn. 311 (1997). Further, the courts have said that statutes affecting substantial changes in the law should be construed retroactively only when the mandate of the legislature is imperative. *In re Judicial Inquiry No. 85-01*, 221 Conn. 625, 632 (1992).

A corollary to the above principles provides that statutes affecting only procedure are presumed to be applicable to all actions, whether pending or not, in the absence of any expressed intention to the contrary. *E.M. Loew's Enterprises Inc. v. International Alliance of Theatrical Stage Employees*, 127 Conn. 415, 418 (1941). Further, a statutory amendment that is intended to clarify the original intent of an earlier statute necessarily has retroactive effect. *State v. Magnano*, 204 Conn. 259 (1987).

The test of whether a statute is to be applied retroactively, absent an express legislative intent, is not a purely mechanical one and even if it is a procedural statute, which ordinarily will be applied retroactively without a legislative imperative to the contrary, it will not be applied retroactively if considerations of good sense and justice dictate that it not be so applied. *American Masons' Supply Co., Inc. v. F.W. Brown Co.*, 174 Conn. 219 (1978); *Sherry H. v. Probate Court*, 177 Conn. 93, 100 (1978).

Public Act 93-426 as it amended Conn. Gen. Stat. § 10-153 contains no express indication of a legislative intent to apply the statute retroactively. Arguably, the statutory amendments brought about by Public Act 93-426 affect only procedural rights. In this regard, prior to 1993, the courts had recognized that teachers' unions owed a duty of fair representation to their members and had allowed a cause of action in court for a breach of that duty. See *Spadola v. Amity Regional Board of Education*, 1992 WL 310628 (Conn. Super.), Dkt No. CV6-10642 (10/15/92, Levin, J.); *Wierzbinski v. Groton Board of Education, et. al.*, 1993 WL 182403 (Conn. Super.), Dkt. No. 515676, (5/19/93, Hurley, J.). In *Spadola, supra*, the court found that the duty of fair representation was implied in the pre-amendment statutory authorization for a union to be an exclusive bargaining representative. Thus, we note that one way to view the 1993 amendments is as codification of the existing law and a designation of the Labor Board as the proper forum for initiating a complaint. See also *Pena-Walzak v. Johnson*, 1990 WL 283871 (Conn. Super.), Dkt. No. 36 49 37 (7/30/90, Miano, J.) ("Substantive law is that which creates duties, rights and obligations, while "procedural or remedial law" prescribes methods of enforcement of rights or obtaining redress").

However, in the only judicial ruling of which we are aware directly addressing this issue, the court found that the amendments to the Act brought about by Public Act 93-426 affected substantive rights for two reasons. In *Alice Evans v. Association of Norwalk School Administrators*, Dkt. No. CV-94-538581 (Ruling on Defendant's Motion to Dismiss, 1/30/98 (Teller, J.)), the court found that the statutory amendment eliminated a plaintiff's right to elect a jury trial and also potentially limited the remedy available to the plaintiff.¹ For both these reasons, the court found that the Public Act affected substantive rights and should be applied prospectively only.

We are convinced that, even if the statute were deemed procedural, considerations of good sense and justice dictate that the Public Act be applied prospectively. In this case, the actions complained of by Complainant occurred at least seven years before the instant complaint was filed. Public Act 93-426 did not take effect until three years after the alleged misconduct occurred during which time Complainant had available to her an avenue of redress in the Superior Court. At this point in time, it does not make good sense nor does it serve justice in any manner to allow an action for acts which allegedly occurred well before the Public Act was

¹The court found that a plaintiff might be precluded from an award of compensatory damages by the Labor Board because the Labor Board is not expressly authorized by the statute to award monetary damages other than backpay.

passed.² As such, we dismiss the complaint.

As we stated at the hearing, due to the circumstances surrounding Complainant's absence from the hearing on February 23, 1999, we would favorably view a request to reconsider this decision if such request is timely filed pursuant to Conn. Gen. Stat. § 4-181a which provides in relevant part:

(A)(1) Unless otherwise provided by law, a party in a contested case may, within fifteen days after the personal delivery or mailing of the final decision, file with the agency a petition for reconsideration of the decision on the ground that: (A) An error of fact or law should be corrected; (B) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or C) other good cause for reconsideration has been shown. Within twenty-five days of the filing of the petition, the agency shall decide whether to reconsider the final decision. The failure of the agency to make that determination within twenty-five days of such filing shall constitute a denial of the petition. ...

The Union indicated at the hearing that it would not oppose such a request from Complainant.

ORDER

Pursuant to the power vested in the Connecticut State Board of Labor Relations by the School Board Teacher Negotiation Act, it is hereby

ORDERED that the complaint filed herein be and the same hereby is, **DISMISSED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John H. Sauter
John H. Sauter
Chairman

Wendella A. Battey
Wendella A. Battey
Board Member

David C. Anderson

²Because of our jurisdictional conclusion, we do not need to decide whether the complaint would also be barred by laches due to the time period between the alleged incidents and the filing of the complaint.

David C. Anderson
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 28th day of April, 1999 to the following:

Attorney Martin Gould
1 Commercial Plaza, 25th Floor
Hartford, Connecticut 06103

RRR

Suzanne Mersereau Searles
507 Dowd Avenue
Canton, Connecticut 06019

RRR

Jaye Bailey Zanta, General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS