

X07-HHD-CV-18-6101218-S : SUPERIOR COURT
INTERNATIONAL ASSOCIATION : COMPLEX LITIGATION DOCKET
OF FIRE FIGHTERS, LOCAL 825
V. : AT HARTFORD
UNIFORMED PROFESSIONAL
FIREFIGHTERS ASSOCIATION OF
CONNECTICUT, INC. : DECEMBER 10, 2018

Memorandum of Decision

This is an application for a temporary restraining order. A couple of key issues are clear. They are settled by reading the contract language that applies and enforcing its plain, common sense meaning. Those things which remain less clear will have to wait for another day.

The application comes from a local firefighters union in New Haven that decided in 2016 to cut its ties with a state union. The state union's policy manual— mandated in its bylaws—says that any local who wants to disaffiliate has to give advance notice to the state organization. The union's fiscal year is the calendar year. So the rules say a local can't break off in the middle of the year. Instead, a departing local has to give warning that it will disaffiliate at the earliest for the next calendar year, and it must do so before September of the prior year for budget planning purposes. It says that if the notice isn't given in time the local still has to pay dues for the year in which it sought to disaffiliate.

The local union protests. It says the state can't bind it to the policy manual. But the court disagrees. The undisputed bylaws say there must be a policy manual "in

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effect.” The local doesn’t dispute that one was adopted and that it requires the notice. The provision doesn’t contradict the bylaws and its plain what it says. So it will be enforced.

The New Haven local told the state organization in January 2016 that it was disaffiliating immediately and didn’t make its 2016 dues payments. So under the rules the local owes the state dues for 2016. The state has kept billing the local for these dues, and this on the surface seems a perfectly reasonable thing to do.

But the state has also kept billing the local for dues covering the years after 2016. The state organization insists the local has never successfully disaffiliated because it gave inadequate notice *and* put the question of disaffiliation only to its board and not to a vote of its full membership.

The state organization admits the local told it in January 2016 by email it was disaffiliating, and there were phone calls and meetings about it. But it says the local didn’t follow the policy manual requirement that a letter be sent by certified mail return receipt requested. The state claims that without the certified letter the local union is still within the state union.

The courts don’t like this kind of form over substance claim. In the Appellate Court 1993 decision in *Yanni v. DelPonte*¹ and this court’s 2005 decision in *B. FINDER Associates v. Coldform, Inc.*², the courts both favored actual notice over the punctilious enforcement of a specified *form* of notice.

¹ 31 Conn. App. 350, 354.

² Superior Court, judicial district of New Britain, Docket No. CV 03 0520375 (May 5, 2005, *Burke, J.*) (39 Conn. L. Rptr. 342.)

But to this court, the policy manual's words are most important because they resolve the question without resort to case law. The policy manual's only penalty for untimely notice is that the union affiliation "shall remain unchanged for the following Fiscal Year." Certainly not forever. And more importantly, the penalty provision doesn't apply for failure to give a timely notice *by certified mail*, it only applies the one year penalty when "a Local fails to inform the Secretary in a timely fashion" Yes, the contract creates a penalty, but it only applies to the timing, not the form of the notice. So the state union can't enforce an unreasonable demand that it can collect dues from the local until it is told the thing it already knows in a letter requesting a return receipt.

The state organization also says the local can't escape without a vote of its full membership. The state union says the constitution and bylaws of the international union they both belong to say a full membership vote is required, and it is undisputed that the full body of local members haven't voted on the question.

But the state union can't win this argument because it is wrong about the language. Article XII, Section 2 of the international bylaws only provides in plain language how to terminate a union organization. It says nothing about how to disaffiliate a local from a state. It refers to the "voluntary forfeiture" of a charter or the "dissolution" of local unions. It is undisputed that the local here has no charter from the state, and it isn't dissolving. Therefore, this provision's requirement for a membership vote plainly doesn't apply.

There are no international rules on how a local disaffiliates from a state union. Therefore, under the state rules, the local is disaffiliated from the state union and owes no dues after calendar year 2016.

So the local owes 2016 dues but has accomplished its disaffiliation as a matter of simple contract law. The local wants the court to enjoin the state organization from continuing to demand money from it. The court has determined the local doesn't owe anything beyond 2016.

But the local also wants money back from the state organization for breach of fiduciary duty so it claims it doesn't owe the state for 2016 either, especially since the state didn't render any services to it in 2016. In fact, the local wants all of its dues back from the state.

To support its demands for money, the court has heard evidence from the local of questionable expenditures from the state union, including personal travel that may not have been reimbursed, suspicious "mistakes" with PAC fund balances, and the admission of a plainly improper loan the state union took (and repaid) from its charitable affiliate. The local has also shown that explicitly budgeted spending for legislative issues is vastly less than the amounts collected for this purpose and is less than just the New Haven local's entire legislative only dues payment. But the court can't determine from this record that only the explicitly budgeted expenditures are for legislative purposes.

Credible evidence suggests that state union employees spend much time on legislative matters, so the court can't from the evidence presented so far establish a dollar amount of any alleged overcharge for legislative purposes. The union will

probably be able to prove some of its claim that its dues were misused but the court has insufficient evidence at this moment to justify any order offsetting the dues likely owed for 2016 or requiring any money from the state union to be put aside or given to the local. The ultimate number from any potential success by the local might be large, small, or in between. But for the moment, this potential offset is enough reason for the court to indicate to the state union that any further collection action of any kind against the local during the pendency of this lawsuit would be legally unjustified. If it persists, the court invites the local to request further relief based upon the findings made and without need for the submission of further evidence on the underlying causes of action. The court trusts this will not be necessary.

Nevertheless, the court does not currently have enough evidence of the character or amount of any defalcations. Therefore, it cannot order any form of dollar prejudgment remedy as the local requests. This isn't to say that the local won't likely prevail on its breach of fiduciary duty claim. It is to say that there isn't enough evidence to establish a breach and a dollar amount certain enough to support a specific dollar prejudgment remedy at this time.

Finally, after this suit was filed, the local filed a complaint with the international. The court ordered the international to be notified of this lawsuit. It was notified, but it has not sought to intervene here. While a document says the international is proceeding to hear the complaint and the objections to it, the international has said nothing about whether its rules actually cover disaffiliation. The state group's chief complaint to the international assumed the international rules governed local disaffiliation from a state organization. Two subordinate claims alleged defamation and anti-union activities

stemming from among other things the filing of this lawsuit and the local's choice of a lawyer in the lawsuit.

The court has ruled that the international bylaws—the governing contract—do not cover a local disaffiliating from a state organization. Therefore, the state organization may not bring this claim under that contract. Second, as the Supreme Court held in *Baron v. Olson* in 1981, injunctions to avoid multiple actions are appropriate and should be used “freely.”³ The subordinate claims filed with the international are in substantial part a reaction to and a complaint about this lawsuit and the things said in association with filing it.

This action was a prior pending action when the international complaint was filed. If it were filed here as a lawsuit the Supreme Court in 2009 in *Bayer v. Showmotion, Inc.*, made it clear that the claim to the international would be barred from proceeding. This is further persuasive authority that equity leans toward seeing that two complaints about the same contract are handled one at a time —starting with the one that was filed first and has the main claim in it.⁴

So the subordinate complaints must wait until it is determined in this action whether those subordinate claims are answered or mooted by these proceedings—the court knows that different standards apply so the ultimate impact is uncertain. Filing them may also prove to have been within the discretion of the state union or it may prove to have been a breach of the covenant of good faith and fair dealing that applies between all parties to contracts. Again, much will be revealed by the outcome of this

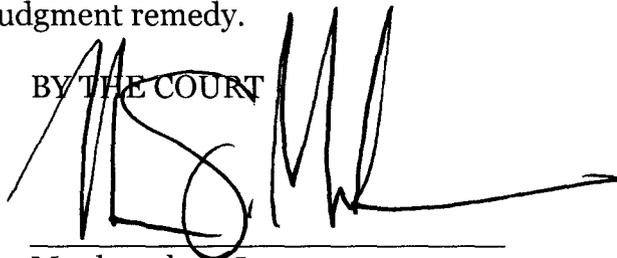
³ 183 Conn. 337, 342.

⁴ 292 Conn. 381, 395-96.

lawsuit. Accordingly, the state union is enjoined from proceeding with any part of its pending complaint to the international union against Local 825 during the pendency of these proceedings.

In summary: the court finds as a matter of law that the International Association of Firefighters Local 825 has disaffiliated from the Uniformed Professional Firefighters Association of Connecticut, Inc. effective no later than January 1, 2017 and that, subject to any setoff found in this lawsuit, Local 825 owes the state union dues for the year 2016. The court finds the Uniformed Professional Firefighters Association of Connecticut, Inc. without legal basis to continue collection action against the International Association of Firefighters Local 825 of any claimed back dues during the pendency of this lawsuit. The court enjoins the Uniformed Professional Firefighters Association of Connecticut, Inc. from prosecuting its contractual complaint against Local 825 during the pendency of this lawsuit. The court declines without prejudice to award any monetary sum as a prejudgment remedy.

BY THE COURT

A handwritten signature in black ink, appearing to be 'Moukawsher, J.', written over a horizontal line. The signature is stylized and cursive.

Moukawsher, J.