



STATE OF CONNECTICUT
OFFICE OF POLICY AND MANAGEMENT

TESTIMONY OF
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OFFICE OF POLICY AND MANAGEMENT
BEFORE THE COMMITTEE ON LABOR AND PUBLIC EMPLOYEES
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Raised Bill No. 5234: An Act Preventing a Labor Organization From Waiving an Employee's Right to Bring a Civil Action For a Civil Rights Violation Against an Employer.

Good afternoon Senator Prague, Representative Ryan and members of the Labor and Public Employees Committee. On its face, HB 5234 appears to codify the law as it has existed in this Country since the United State's Supreme Court handed down its 1974 decision in the case of *Alexander v. Gardner-Denver Co.*¹ In that case, the Court made it clear that a Labor Union could not waive an employee's rights to file or pursue a discrimination claim. No collective bargaining agreement between the State of Connecticut and State employees contains a provision contrary to the dictates of the *Gardner-Denver* decision. Since that has been the law of the land for more than 30 years one must inquire as to what is the motivation behind this legislation.

In 2008, the Second Circuit Court of Appeals handed the decision in *Richardson v. CHRO, et al.*² and upheld a provision in a labor agreement which provided an election of remedies, or choice of forums. In essence, the contract language, in that case, provided that if an employee elected to pursue their grievance in the anti-discrimination venue of CHRO, the Union would not be obligated to pursue the same matter to arbitration under the terms of the labor agreement. It did not bar the employee from pursuing a discrimination complaint or require a waiver of the same; it simply provided the employee with a choice of where he or she wanted to pursue the claim, and at whose expense.

In upholding the contract language as non-retaliatory or discriminatory, the Second Circuit observed that an election of remedies provision avoids "duplicative

¹ 415 U.S. 36, 45 (1974).

² *Richardson v. Commission on Human Rights & Opportunities et al.* Docket No.06-1474-cv (2nd Cir. 2008), *Cert. denied*, 2009.

proceedings in two separate forums for adjudicating claims of discrimination without affecting a claimant's work, working conditions or compensation, and more importantly, "It does not foreclose other avenues of relief, such as the right to pursue claims in federal court which was at issue in *Gardner-Denver*, or the right to pursue claims with non-CHRO bodies such as the EEOC." That Court added that, "It only requires the employee to make a concrete choice, at a specific time, between filing a state claim with CHRO and having the union pursue his or her grievance at arbitration."

What this legislation should NOT be interpreted to do is foreclose the labor union from assisting an employee in resolving his or her grievance and any other related claims the employee may have pending in other venues. Often employees will file a grievance, a CHRO complaint, a claim with the labor department, and even a lawsuit or any other venue that entertains their complaints. The employer is forced to retain legal counsel to defend against the lawsuit, devote enormous amounts of time and man-power in preparing for and defending the employer's case in arbitration, and the various venues. In reality, it is all over the same issue. If the employer, the employee, and the Union are willing to resolve everything, at one time, in one place, why shouldn't the parties be allowed to do that?

One of the advantages of the grievance and arbitration process, as a general rule, is that it moves more swiftly than civil litigation. If an employee has multiple claims pending in various forums, and the employer anticipates having to litigate in each and every one of those forums, any legislation that could be interpreted as prohibiting a Union from assisting an employee in resolving all of those claims would only serve to stifle the settlements and resolutions that are the quintessence of the collective bargaining process.

Given the fact that one cannot now, nor has a labor union been able to prospectively waive an employee's right to pursue a discrimination complaint since the Supreme Court's pronouncement in *Gardner-Denver*, this legislation is at worst unnecessary, and at best benign. Since, however, it is subject to misinterpretation and misapplication, we would ask that the General Assembly not pass it or, in the alternative make clear the following: The rights of an employee to elect a forum consistent with the law and the labor agreement, and to have its certified representative assist in the resolution of any and all related matters would not be effected by this provision if it is enacted.