IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE PENNSYLVANIA INDEPENDENT WASTE HAULERS ASSOCIATION, Plaintiff,	:	CIVIL ACTION
v.	:	NO. 99-1782
WASTE SYSTEM AUTHORITY OF EASTERN MONTGOMERY COUNTY, Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J. March 7, 2000

Presently before the Court in this action is Defendant Waste System Authority of Eastern Montgomery County's ("WSA") Rule 12(c) Motion for Partial Judgment on the Pleadings and Plaintiff Pennsylvania Independent Waste Haulers Association's (the "Association") response thereto. WSA seeks partial judgment as to Counts One, Two, Three and Four of the Association's Complaint.

I. BACKGROUND

WSA was part of a financing arrangement to build a trash-to-steam facility (the "Facility") in the Eastern District of Montgomery County, Pennsylvania, which cost approximately $160 million. WSA agreed to provide sufficient revenue to pay for the financing of the Facility. In 1988, WSA and Montgomery County (the "County") established a scheme of flow control ordinances that would capture the flow of waste generated in the district and

generate the necessary revenues through tipping fees charged to the haulers that brought the waste to the Facility. On May 16, 1994, the United States Supreme Court decided the case of C & A Carbone, Inc. v. et al v. Town of Clarkstown, 511 U.S. 383 (1994)[1], and the WSA recognized the existing flow control scheme was violative of the Commerce Clause. The County eventually appointed a Blue Ribbon Panel (the "Panel") to formulate a new scheme to replace the flow control ordinance.

In January 1998, the Panel provided a report of its efforts in an attempt to find an alternative arrangement which would assure both adequate revenues and a stream of waste to the Facility. The Report proposed a scheme by which the owners of real property in the district would be charged directly by enough fees each year to provide the revenues to pay for the Facility and the haulers would be permitted to dump the waste generated in the district at the Facility for a zero tipping fee. This scheme was the WGF system. The WGF system resulted in the haulers paying nothing to dump at the Facility and economically compelled the real property owners to have to engage haulers who would dispose of the waste only at the Facility or else pay additional charges to have the waste disposed of other than at the Facility.

II. STANDARD

A motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) is treated under the same standard as a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 376-77 (E.D. Pa. 1995) (Padova, J.), aff'd without op., 91 F.3d 125 (3d Cir.), cert. denied, 117 S. Ct. 435 (1996). Consequently, judgment

1. Both Plaintiffs and Defendant concede that the Carbone case does not deal with the issue of standing, but rather, with the issue of the Dormant Commerce Clause.

under Rule 12(c) will only be granted where the moving party has clearly established that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law. See Institute for Scientific Info., Inc. v. Gordon and Breach, Science Publishers, Inc., 931 F.2d 1002, 1005 (3d Cir.), cert. denied, 502 U.S. 909 (1991). Additionally, the court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party. See Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 406 (3d Cir. 1993).

III. DISCUSSION

A. Count One--Commerce Clause

1. Associational Standing:

As the Association asserts in the Complaint, it has "standing to assert the claims it raises . . . on behalf of its members." Therefore, it cannot be said that the Association is bringing this lawsuit on its own behalf, but rather on "behalf of its members." See Fair Housing Council of Suburban Philadelphia v. Montgomery Newspapers, 1997 WL 5185, * 3 (E.D. Pa. Jan 7, 1997)([w]hen plaintiff is an organization, it may have standing in its own right, i.e. "independent standing" or on behalf of its members, i.e. "associational standing.") An association has standing to bring suit on behalf of its members if it satisfies the following three elements: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of the individual members of the

lawsuit[2]. Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343 (1977). The plaintiff bears the burden of establishing each of the requisite standing elements. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). "Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of litigation." Id. As the discussion supra dictates, the first prong of the Hunt test for associational standing is met in this case and therefore will not be addressed further.[3]

As the Complaint states, the Association's articles of incorporation set forth its purpose as "promoting the interest of the solid waste collection, transportation and hauling industries, including, without limitation, by attempting to ensure that all persons in such industries are treated fairly and have equal opportunity, . . . and by taking any and all other action as is necessary and desirable to further such purposes." Complaint at 1. Therefore, because the

---

2. Previously, the United States Supreme Court recognized an organization's standing to bring such a suit in Warth v. Seldin, 422 U.S. 490 (1975) when it stated:

> [t]he association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit . . . . [S]o long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

Id. at 511.

3. WSA asserts that the Association fails to satisfy the first prong of the Hunt test because WSA does not provide the Court with a list of its members. However, due to the nature of the Motion before the Court, it is not yet appropriate to make such a determination. While WSA is correct in arguing that an organization's failure to provide competent evidence establishing the Association's membership is fatal, I do not feel that it is appropriate to make a decision at this point in the proceedings. See Shammouh, et al, v. Karp, et al., 1997 WL 551207, *3 (E.D.Pa. Aug. 22, 1997).

Complaint explicitly states that the case at bar, if resolved in the Association's favor, would serve the interests of each of its members, and in light of the nature of the Motion at bar, this Court is satisfied with the sufficiency of this pleading and the second prong of the Hunt test is satisfied.

WSA asserts that the Association's claim for damages alone mandates the denial of associational standing, in that, an award of damages would have to be based upon analysis of individual client accounts and the billing practices of every individual association member. As the Complaint explicitly states in each of its four counts, the relief sought is almost entirely that of injunctive relief, however, it is crucial to note that injunctive relief it not all that the Association requests.

> W[herefore] the PIWHA demands a judgment in its favor and against the Authority, that the Authority be permanently enjoined from implementing or enforcing the Ordinance or any other ordinance that imposes upon the Municipalities, their residents, or haulers a system of legal, statutory or economic flow control, that the Authority be ordered not to pass any ordinance relating to flow control or the collection, transportation or disposal of waste within its jurisdiction without the prior approval of this Court, and that it be awarded damages along with costs, fees -- including but not limited to reasonable and appropriate attorneys fees -- and such other relief as this Court may deem just and proper.

This particular request for relief is not one exclusively for injunctive relief, but one for an award of damages as well. Thus, the problem before this Court is that the United States Supreme Court held in United Food and Commercial Workers Union Local 751, that "'individual participation' is not normally necessary when an association seeks prospective or injunctive relief for its members, but indicated that such participation would be required in an

action for damages to an association's members, thus suggesting that an association's action for damages running solely to its members would be barred for want of the association's standing to sue." 517 U.S. at 546 (quoting Hunt, 432 U.S. at 343.). It is clear from the Complaint, that the Association is seeking more than injunctive relief. It explicitly requests "that it be awarded damages along with costs, fees -- including but not limited to reasonable and appropriate attorneys fees."

There is no question as to whether or not an organization may sue to redress its members's injuries, even without a showing of injury to the organization itself. See Warth v. Seldin, 422 U.S. 490 (1975); Hunt, 432 U.S. at 343; Automobile Workers v. Brock, 477 U.S. 274 (1986). As we explore the third prong of the Hunt test for associational standing, our focus cannot be on the injuries sustained, but rather on the relief sought to redress those injuries.

The third prong of the Hunt test has been recognized by the United States Supreme Court as focusing on matters of "administrative convenience and efficiency, not on elements of a case or controversy within the meaning of the Constitution." United Food and Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544 (1996). The Court acknowledged that Hunt's third prong "may guard against the hazard of litigating a case to the damages stage only to find the plaintiff lacking detailed records of the evidence necessary to show the harm with sufficient specificity." Id. at 556. However, the Court went on to state that this consideration is "generally on point whenever one plaintiff sues for another's injury." Id. at 556-57 ("Representative damages litigation is common--from class actions . . . to suits by trustees representing hundreds of creditors in bankruptcy to parens patriae actions by state governments to litigation by and against executors of decedents' estates.")(quoting In re Oil Spill

by the Amoco Cadiz Off the Coast of France on Mar. 16, 1978, 954 F.2d 1279, 1319 (C.A.7 1992)).

WSA seems to contend that individual participation precludes associational standing whenever an organization seeks damages on behalf of its members. See United Food and Commercial Workers Union Local 751, 517 U.S. 544. A proper reading of a string of United States Supreme Court cases referenced above provides that such a blanket conclusion is not proper. While it is clear that the Complaint does, in fact, seek more than injunctive relief, this is not fatal to the Association's standing. Since the third prong of the Hunt test is not constitutionally mandated, and has been ruled to exist for purposes of administrative convenience and efficiency once the first two prongs are satisfied, I find that the Association has survived the Hunt test for associational standing. "Circumstantial evidence of the prudential nature of this requirement is seen in the wide variety of other contexts in which a statute, federal rule, or accepted common-law practice permits one person to sue on behalf of another, even where damages are sought." Id. at 557. I do not find that any evidence related to the relief sought would require the participation of the individual members of the Association, for discovery alone should provide WSA with the information it seeks in order to defend this case. The purpose of the Association's incorporation provides the mechanism by which it may sue on behalf of the individual members.

B. Count Two--Violation of the Contracts Clause

Count Two of the Association's Complaint alleges that in creating the WGF system, WSA has impaired the parties' obligations under existing hauler contracts[4] by, inter alia: (1) imposing an additional charge upon the generator for disposal beyond what it has agreed to pay the member; (2) imposing new geographical restrictions upon the transportation and disposal of waste at the Facility; and (3) imposing new administrative burdens on the member for which it is not compensated in its agreement with the generator. In the Memorandum attached to the Motion for Partial Judgment on the Pleadings, WSA claims that the Association has not alleged that its contracts have been subject to interference. WSA claims that the best that can be said is that the Association's claims of lost surcharges are "per se unsubstantial." In consideration of the nature of the Motion at bar, this argument is not well-taken. The Complaint is facially sufficient to state a claim for a violation of the Contracts Clause. At this point, the Court is not concerned with how drastic the alleged violation is, see Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 411, 413 (1983). Therefore, WSA's argument fails.

C. Count Three and Count Four--State Claims

WSA asserts that should this Court dismiss all of the Association's federal claims, it should then dismiss the pendant state-law claim contained in Count Three of the Amended Complaint. As I have not dismissed all of the Association's federal claims, pendant jurisdiction remains.

---

4. Each of the members of the Association had one or more contracts to haul and dispose of waste with one or more commercial waste generators in the Municipalities in effect as of January 1, 1999, the date on which the Ordinance was implemented.

IV. CONCLUSION

Count One survives this Motion for Partial Judgment on the Pleadings, for WSA has associational standing to assert Commerce Clause claims on behalf of its members. Moreover, the Complaint explicitly states that WSA interfered with existing contractual obligations and therefore, survives said Motion. Count Two survives this Motion, for the Complaint is facially sufficient to state a claim for a violation of the Contracts Clause. Counts Three and Four also survive this Motion, for pendant jurisdiction remains.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE PENNSYLVANIA INDEPENDENT WASTE HAULERS ASSOCIATION, Plaintiff,	:	CIVIL ACTION
v.	:	NO. 99-1782
WASTE SYSTEM AUTHORITY OF EASTERN MONTGOMERY COUNTY, Defendant.	:	

O R D E R

AND NOW, this 7th day of March, 2000, upon consideration of Defendant Waste System Authority's Motion for Partial Judgment, and Plaintiff Pennsylvania Independent Waste Haulers Association's responses thereto, it is hereby ORDERED and DECREED that said Motion is DENIED.

BY THE COURT:

RONALD L. BUCKWALTER, J.