

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

DELIA ANDERSON,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-98-CV-359
	)	
v.	)	ACTION FOR BREACH OF CONTRACT
	)	AND FIDUCIARY DUTY
AMERICAN FEDERATION OF TEACHERS d/b/a)	)	
AFT LOCAL 1826,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION

MOLLOY, Judge.

THIS MATTER comes before the Court on Defendant American Federation of Teachers d/b/a AFT Local 1826's ("Union") motion for summary judgment filed on July 8, 2015. After receiving several extensions, Plaintiff Delia Anderson ("Anderson") filed a response on October 8, 2015. For the reasons stated below, the Court will grant the Union's motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

The undisputed facts of this case are simple and straightforward. Anderson commenced her employment with the Virgin Islands Department of Education ("DOE") as a classroom teacher in 1980. As a teacher, Anderson was a member of the Union. At all times relevant to the facts of this case, the Union and the Government of the Virgin Islands were parties to a Collective Bargaining Agreement that governed the terms and conditions of employment for teachers.

On October 4, 1993, Anderson sustained a job-related injury at the John H. Woodson

Junior High School. She subsequently received medical treatment for her injuries through the government's workers' compensation program. On January 22, 1996, Anderson was approved by her physician to return to work. However, on March 4, 1996, the DOE issued a letter to Anderson notifying her it was terminating her employment as a school teacher. After receiving the notice of termination, Anderson contacted the Union and requested that a grievance be filed on her behalf. Anderson immediately met with Cecil R. Benjamin, President of the Union, and started the grievance process. The Union then held meetings with the DOE on Anderson's behalf.

Not being satisfied with the processing of her case, on October 7, 1996, Anderson retained an attorney and filed an unfair labor practice charge with the Virgin Islands Public Employees Relations Board ("PERB") against the DOE and the Union, alleging that she was terminated without due process and in violation of the CBA. Anderson further alleged that she made numerous phone calls and wrote letters to Union representatives complaining about her termination but the Union failed to file a timely grievance on her behalf.

On November 16, 1997, Anderson and the DOE settled the PERB case wherein Anderson would be immediately reinstated and provided with back pay to the date of her termination. However, Anderson was not compensated for lost retirement benefits or legal fees expended in pursuit of the unfair labor practice charge.

Anderson subsequently filed the instant action against the Union alleging causes of action for breach of fiduciary duty, breach of contract, and negligent representation. On July

8, 2015, the Union filed the instant motion for summary judgment. Anderson filed an opposition on October 8, 2015. The Union filed a reply to the opposition on November 18, 2015.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56, applicable through Superior Court Rule 7, governs motions for summary judgment in this Court. *See Burd v. Antilles Yachting Services, Inc.*, 57 V.I. 354, 360 n.2 (V.I. 2012). "Summary judgment is a drastic remedy, and should be granted only when the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact that must be decided by a jury." *United Corporation v. Hamed*, 2016 V.I. Supreme LEXIS 1, *18 (V.I. 2016) (citation and internal quotation marks omitted). The moving party must support the motion by "identify[ing] those portions of the record that demonstrate the absence of a genuine issue of material fact." *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013). If the moving party does so, "the burden shifts to the non-moving party to present 'affirmative evidence' from which a jury might reasonably return a verdict in his favor." *Id.*

In considering whether there are any disputed issues of material fact, the Court must "view all inferences from the evidence in the light most favorable to . . . the nonmoving party, and take [its] allegations as true if properly supported." *Hamed*, 2016 V.I. Supreme LEXIS 1 at *18 (citation omitted). The Court's role in deciding a motion for summary judgment is not to determine truth, but rather to determine whether a factual dispute exists that warrants

trial on the merits. *See Williams v. United Corp.*, 50 V.I. 191, 195 (V.I. 2008). Where such a factual dispute exists, the Court must deny summary judgment. *See Sealey-Christian v. Sunny Isle Shopping Center*, 52 V.I. 410, 423 (V.I. 2009).

III. DISCUSSION

The Union argues that it is entitled to summary judgment because Anderson has failed to show that the Union breached its duty of fair representation. Specifically, the Union argues that Anderson has submitted “no evidence” that the Union’s conduct toward Anderson was “arbitrary, discriminatory, or in bad faith.” Def.’s Mem. in Supp. of Mot. for Summ. J. at 7-8. The Union insists that Anderson’s filings “fail[] to cite one . . . element of the breach of the duty of representation.” *Id.* at 9. The Union also introduced letters written by Anderson in which Anderson seemingly admits that the Union attended meetings on Anderson’s behalf. Def.’s Mot. for Summ. J. - Ex. 6, 7; *see also* Def.’s Repl. To Pl.’s Resp. to Def.’s Mot. Summ. J. at 3. Finally, the Union cites case law for the proposition that, even if the Union were careless or sloppy in its handling of the Anderson matter, mere negligence or untimeliness on the part of a union does not constitute a breach. *Id.* at 3-4.

Anderson responds that the Union “breached its duty off fair representation by its conduct of simply ignoring Plaintiff.” Pl.’s Resp. to Def.’s Mot. For Summ. J. at 8. Specifically, Anderson asserts that “no meeting ever took place between the Union and employer as required, neither was Plaintiff made aware of whether the grievance had actually been filed.” *Id.*

The complaint in this matter alleges causes of action for breach of fiduciary duty, breach of contract, and negligent representation. All of these claims stem from Anderson's allegations that the Union failed to process her grievance adequately and in a timely manner. Both parties recognized that these causes of action are essentially a claim against the Union for breach of duty of fair representation. *See Anderson v. AFT Local 1826*, 2014 V.I. LEXIS 23, *5-6 (V.I. Super. Apr. 3, 2014) (construing Anderson's complaint as alleging a single claim against the Union for breach of duty of fair representation). Thus, the Court will analyze the Union's motion for summary judgment under the substantive law governing a cause of action for breach of duty of fair representation. *See Bertrand v. Mystic Granite & Marble, Inc.*, 63 V.I. 772, 778 (V.I. 2015) (opining that court must analyze the motion for summary judgment in the context of the substantive law governing the cause of action).

In order to prevail on a claim for breach of duty of fair representation, a plaintiff must prove that "[a] union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); *see also Joseph v. Bureau of Corrections*, 54 V.I. 644, 655 (V.I. 2011). Consequently, "[i]n order to successfully defend against a motion for summary judgment on a duty of fair representation claim, the plaintiff must point the court to evidence in the record supporting at least one of these elements." *Merritt v. Int'l Ass'n of Machinists & Aero. Workers*, 6613 F.3d 609, 619 (6th Cir. 2010).

"[A] union's actions are arbitrary only if, in light of the factual and legal landscape at

the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness,' . . . as to be irrational." *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 67 (1991) (quoting *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953)). Likewise, a plaintiff alleging discriminatory conduct must present "evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." *Almalgamated Ass'n of Street, Electric Railway & Motor Coach Employees of America v. Lockridge*, 403 U.S. 274, 301 (1971); see also *Jeffreys v. Commc'ns Workers of Am.*, 354 F.3d 270, 275-76 (4th Cir. 2003) (explaining that the duty of fair representation "prohibits only invidious discrimination, such as discrimination based on constitutionally protected categories like race or gender, or discrimination that arises from animus or prejudice"); Martin H. Malin, *The Supreme Court and the Duty of Fair Representation*, 27 Harv. C.R.-C.L. L. Rev. 127, 185 (1992) (concluding that the Supreme Court "initially developed the duty of fair representation to afford a pre-Civil Rights Act remedy for racial discrimination" against union members). Finally, a union acts in bad faith when it "acts with an improper intent, purpose, or motive," which encompasses "fraud, dishonesty, and other intentionally misleading conduct." *Flight Attendants in Reunion v. Am. Airlines, Inc.*, 813 F.3d 468, 474 (2d Cir. 2016) (internal citations omitted).

Here, the Union argues that there is no evidence that its actions were arbitrary, discriminatory or made in bad faith. The Union presented evidence that it submitted a letter to DOE dated March 11, 1996, appealing the DOE's decision to terminate Anderson's

employment and requesting a hearing. Def.'s Mot. Summ. J. - Ex. 17 (Letter from President Cecil Benjamin to District Superintendent Anita Plaskett). Anderson acknowledged that the Union commenced the grievance process but was dissatisfied with the way her case was being handled. *See* Def.'s Mot. Summ. J. - Ex. 18 (Letter from Delia Anderson to Cecil Benjamin dated May 7, 1996). Thus, the Union submits that there is no evidence establishing that Anderson can prevail on her claim. The Union's "absence of evidence" theory is sufficient to shift the burden to Anderson to demonstrate that there are genuine issues of material fact in dispute on her claim for breach of duty of fair representation. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986) (stating that a "moving party is 'entitled to a judgment as a matter of law' [if] the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof").

Anderson has not submitted any evidence demonstrating that the Union's actions were arbitrary, discriminatory, or made in bad faith. In her affidavit, Anderson states that "[t]he Union failed to provide me with representation and failed to file a timely grievance on my behalf." Anderson Aff. ¶ 4 (Oct. 9, 2015). While Anderson insists that she was "literally ignored" by the Union, *see* Pl.'s Resp. to Def.'s Mot. For Summ. J. at 8, the record shows that Anderson, in several letters to Union officials, acknowledged that the Union held meetings with the DOE on Anderson's behalf. Still, Anderson maintains that the Union was negligent because it did not meet the timeline Anderson preferred. However, it is well-established that "negligence is not enough to support a claim of unfair representation." *Ahmad v. United*

Parcel Serv., 281 Fed. Appx. 102, 104 (3d Cir. 2008). Additionally, Anderson has presented no evidence that the Union handled her grievance in a discriminatory manner. She has offered no evidence showing that the Union treated her case differently based upon her race, gender or other constitutionally protected classification. *See Simo v. Union of Needletrades, Indus. & Textile Emps.*, 322 F.3d 602, 618-19 (9th Cir. 2003) (opining that the union's discriminatory conduct must be "based upon impermissible or immutable classifications such as race or other constitutionally protected categories, or arises from prejudice or animus"). Anderson further argues that the Union acted in bad faith by refusing to answer her calls, respond to her complaints and pursuing her grievance. Pl.'s Resp. to Def.'s Mot. For Summ. J. at 8. But it is well-settled that, absent a showing of animus or prejudice, a union's decision to delay or even decline the prosecution of a grievance does not by itself establish bad faith. *See Spellacy v. Airline Pilots Association-International*, 156 F.3d 120, 126 (2d Cir. 1998) ("[The union's] decision not to file grievances on behalf of the effected pilots, or to assist pilots in prosecuting grievances, [] does not rise to the level of bad faith."). Anderson has introduced no evidence that the Union possessed any animus towards her or that the Union acted with an improper intent, purpose, or motive encompassing fraud or dishonesty.

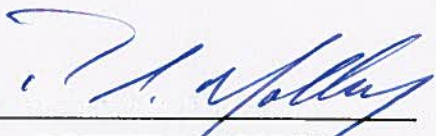
It must be noted that "judicial review of union action . . . 'must be highly deferential, recognizing the wide latitude that [unions] need for the effective performance of their bargaining responsibilities.'" *Id.* (internal citations and quotations omitted). A unionized employee does not have an absolute right to have his or her grievance taken to arbitration.

Vaca, 386 U.S. at 191 (“[W]e do not agree that the individual employee has an absolute right to have his grievance taken to arbitration . . .”). Indeed, “[i]t is only when the actions of the Union are so far beyond the wide range of reasonableness as to be irrational that a plaintiff may maintain an action for breach of duty of fair representation.” *Id.* Despite Anderson’s displeasure with the way her grievance was handled, the Court finds that there are no genuine issues of material fact that the Union’s actions were arbitrary, discriminatory, or made in bad faith.

IV. CONCLUSION

For the reasons stated above, the Court will grant the Union’s motion for summary judgment and will dismiss this case. An appropriate Judgment follows.

DATED: August 9, 2016



ROBERT A. MOLLOY
Judge of the Superior Court