

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

DELIA ANDERSON,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-98-CV-359
	)	
v.	)	
	)	
AMERICAN FEDERATION OF TEACHERS d/b/a)	)	
AFT LOCAL 1826,	)	
	)	
Defendant.	)	
_____	)	

APPEARANCES:

MARTIAL A. WEBSTER, ESQ.
Law Office of Martial Webster, Esq.
Frederiksted, St. Croix, VI
Attorney for Plaintiff

EMILE A. HENDERSON, III, ESQ.
Law Office of Yvette Ross-Edwards
Frederiksted, St. Croix, VI
Attorney for Defendant

MEMORANDUM OPINION

MOLLOY, Judge.

THIS MATTER comes before the Court on Defendant's Motion for Summary Judgment filed on July 20, 2007. The Defendant moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure asserting that there are no genuine issues of material fact in dispute and it is therefore entitled to judgment as a matter of law. Plaintiff filed a response on October 26, 2007. For the reasons stated below, the Court will deny Defendant's Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Delia Anderson ("Anderson"), was employed with the Virgin Islands Department of Education as a teacher and was a dues paying member of the American Federation of Teachers, Local 1826 ("Union"). As part of a collective bargaining agreement

("CBA") between the Government and the Union, the Union assumed the responsibility to represent Anderson in disputes with the Department of Education regarding conditions of employment.

On October 4, 1993, Anderson was employed by the Department of Education as a teacher at John H. Woodson Junior High School when she injured herself while attempting to close a classroom door. Anderson subsequently received medical treatment for her injuries through the Workers' Compensation Program. In March 1996, Anderson was terminated from her position as a teacher at Woodson Junior High School after attempting to return to work following recovery from her job-related injuries. After receiving the notice of termination, Anderson contacted the Union and requested that a grievance be filed on her behalf. Anderson alleged 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 the Union representatives complaining about her termination but the Union failed to file a timely grievance on her behalf.

On October 7, 1996, Anderson filed an unfair labor practice charge with the Public Employees Relations Board ("PERB"), against the Department of Education and the Union. On November 16, 1997, Anderson and the Department of Education stipulated to an agreement in which the Anderson was immediately reinstated and provided with back pay to the date of her employment termination. As a result, Anderson withdrew the charge filed against both the Government and the Union.

On April 3, 1998, Anderson filed the instant action against the Union alleging causes of action for breach of fiduciary duty, breach of contract, and negligent representation. The

Union later moved for summary judgment on July 20, 2007. Anderson filed a response on October 26, 2007. This motion has been pending for over six years and the Court finds this motion ripe for disposition.

II. STANDARD OF REVIEW

Summary Judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A factual dispute is deemed genuine if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Id.* at 247-48. 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.* All allegations of the non-moving party supported by proper proofs must be accepted by the Court as true for the purposes of deciding the motion. *Anderson*, 477 U.S. at 248.

The Court may not make credibility determinations or weigh evidence. *Id.* at 255. If the record thus construed could not lead the trier of fact to find for the non-moving party, there is no genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The Court must draw all reasonable inferences from the underlying facts in the light most favorable to the non-moving party. *Joseph v. Daily News Publishing*

Co., Inc., 57 V.I. 566, 581 (V.I. 2012). 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 a trial on the merits. *Williams v. United Corp.*, 50 V.I. 191, 195 (V.I. 2008). Where such a factual dispute exists, the Court must deny summary judgment.

III. DISCUSSION

The Union contends that it is entitled to summary judgment because Anderson failed to file the civil action within the six month statute of limitations period prescribed by the National Labor Relations Act ("NLRA"). Anderson responds that jurisdiction in this case is premised on the Virgin Islands Public Employee Labor Relations Act ("PERLA"), which provides that the six month statute of limitations period provided by the NLRA is inappropriate as applied to actions brought under the local labor relations statute.

In her complaint, Anderson alleges causes of action for breach of fiduciary duty, breach of contract, and negligent representation. In its motion for summary judgment, the Union contends that Anderson's claim is essentially an action for breach of duty of fair representation. *See* Def.'s Mot. Summ. J. 5, 7. Anderson also characterizes her suit as a "[c]ase against the Union for breach of duty of fair representation and damages." Pl.'s Resp. to Def.'s Mot. Summ J. Mot. 2. The complaint alleges that the Union "failed to provide Plaintiff with adequate representation and has neglected to represent Plaintiff and file a timely grievance on her behalf." Compl. ¶ 8. Thus, for purposes of the Defendant's motion for summary judgment, the Court will construe the counts alleged in the complaint as a cause of action for breach of duty of fair representation.¹ Since the appropriate statute of

¹ In order to prevail on a claim for breach of duty of fair representation, a plaintiff must prove that "[a] union's

limitations period is predicated on whether Anderson's breach of duty of fair representation claim is brought under federal or local statute, this issue will be discussed first.

A. Governing Law

Anderson alleges in her complaint that the Court has jurisdiction in this matter pursuant to 29 U.S.C.A. § 141 *et. seq.* (the Labor Management Relations Act, which includes the NLRA) and 24 V.I.C. § 361 (PERLA). The NLRA is a federal statute that guarantees basic rights of private sector employees to organize into trade unions, engage in collective bargaining for better terms and conditions at work, and take collective action including strike if necessary. 29 U.S.C. §§ 151-68. The NLRA only covers private employees and does not apply to public sector employees. *Crilly v. Southeastern Pa. Transp. Auth.*, 529 F.2d 1355, 1357 (3d Cir. 1976). PERLA, on the other hand, is a comprehensive statute governing labor relations among Virgin Islands government agencies, employees of those public entities, and the unions who represent the employees. 24 V.I.C. § 361, *et. seq.*; *see also Seafarers Int'l Union of N. America v. Thomas*, 42 F.Supp.2d 547, 552 (D.V.I. App. Div. 1999). PERLA has the same objectives for public labor relations in the Virgin Islands as federal labor law has for private labor relations nationwide. *Seafarers*, 42 F.Supp.2d at 552-53. Accordingly, since PERLA governs local public employee labor relations and Anderson was an employee of the Virgin Islands Department of Education, her cause of

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). "Negligence, poor judgment, or bad results are insufficient to sustain a claim for breach of duty of fair representation." *Petersen v. United Steelworkers of Am.*, Civ. No. 2004-0062, 2009 WL 3269311 at *7 (D.V.I. Oct. 8, 2009). "It 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.*; *see also Ahmad v. United Parcel Serv.*, 281 Fed. Appx. 102, 104 (3d Cir. 2008) (opining that "mere negligence is not enough to support a claim of unfair representation.")

action as a government employee for breach of duty of fair representation must arise under PERLA.

B. Statute of Limitations

Under PERLA, public employees may bring suit against their unions. 24 V.I.C. § 383. However, since section 383 does not expressly contain a statute of limitations period, limitations periods contained in 5 V.I.C. § 31 apply to actions brought under this section. *Gomez v. Gov't of the Virgin Islands*, 882 F.2d 733, 738 (3d Cir. 1989). As mentioned above, Anderson commenced this action alleging that the Union breached its duty to fairly represent her. "An employee's claim against a union for breach of its duty of fair representation is analogous to a claim for breach of a fiduciary duty or legal malpractice." *Id.* Since both of these claims are classified as torts, a fair representation claim must be brought within two years after the cause of action shall have accrued. 5 V.I.C. § 31(5)(A).

A claim against a union for breach of duty of fair representation accrues when it becomes apparent or should have become apparent that further union appeals would be futile. *Bensel v. Allied Pilots Assoc.*, 387 F.3d 298, 305 (3d Cir. 2004). However, if the union "purports to continue to represent an employee in pursuing relief," the employee's claim against the union does not begin to accrue "so long as union proffers 'rays of hope' that the union can remedy the cause of employee's dissatisfaction." *Bensel*, 387 F.3d at 305 (quoting *Childs v. Penn Fed'n Bhd. of Maint. Way Employees*, 831 F.2d 429, 434 (3d Cir. 1987)). Consequently, it is irrelevant if the plaintiff was aware or "with reasonable diligence could have discovered the acts constituting the breach at any time before rays of hope were extinguished." *Bensel*, 387 F.3d at 305 (observing that the rays of hope doctrine is

supported by policies favoring arbitration and grievance processes and recognizing that it would be unwise for a worker to antagonize her union by filing a lawsuit against it while the union is still representing her).

Here, neither party identifies a date as to when Anderson's cause of action accrued or when any "rays of hope" were extinguished. Anderson commenced this civil action on April 3, 1998. If Anderson's claim accrued at any time before April 3, 1996, it would be time barred by the two year statutory limitations period provided by 5 V.I.C. § 31(5)(A). During her deposition, Anderson testified that she felt the Union was not properly representing her between March 1996 and October 1996. *See* Def.'s Mot. Summ. J. Ex. 15 — Anderson Dep. 58:3-24, May 24, 2007. However, neither Anderson nor the Union specifies a precise date when it became apparent to Anderson that further appeals to the Union would be futile or when any "rays of hope" were extinguished. The Court, therefore, is unable to determine the exact date of when Anderson's cause of action for breach of duty of fair representation accrued. Because the Union has the burden to demonstrate the exact date Anderson's cause of action accrued and the Union failed to meet this burden, the Court finds there is insufficient evidence in the record to grant Defendant's motion for summary judgment.

IV. CONCLUSION

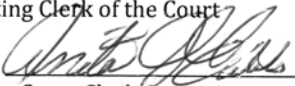
For the reasons stated above, this Court finds that the causes of action as alleged in the complaint are governed by the two-year statute of limitations provided under 5 V.I.C. § 31(5)(A). Because the Union fails to identify the exact date as to when Anderson's cause of action accrued, the Court will deny the motion for summary judgment. An appropriate

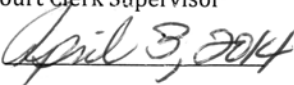
Anderson v. AFT Local 1826
Civil No. SX-98-CV-359
Memorandum Opinion
Page 8 of 8

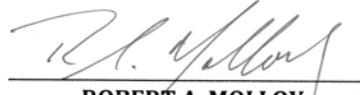
Order follows.

DATED: April 3, 2014

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By: 
Court Clerk Supervisor

Dated: 


ROBERT A. MOLLOY
Judge of the Superior Court