

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. FR-03-12

(DUTY OF FAIR REPRESENTATION)

STEVEN L. STOTLER, JR.,)

Complainant,)

v.)

TEAMSTERS LOCAL 223)

and)

CITY OF MEDFORD,)

Respondents.)

DISMISSAL ORDER

Steven L. Stotler, Jr., Medford, Oregon, appeared *pro se*.

Sarah K. Drescher, Attorney at Law, Tedesco Law Group, Portland, Oregon, represented respondent Teamsters Local 223.

Kathy A. Peck, Attorney at Law, Williams, Zografos & Peck, Lake Oswego, Oregon, represented respondent City of Medford.

On May 23, 2012, Complainant Steven L. Stotler, Jr. (Stotler), filed this complaint alleging that respondent Teamsters Local 223 (Teamsters) breached its duty of fair representation in violation of ORS 243.672(2)(a), and that the City of Medford (City) terminated him without just cause in violation of ORS 243.672(1)(g). The case was assigned to Administrative Law Judge (ALJ) Peter A. Rader.

On June 7, 2012, the Teamsters filed a Motion to Dismiss the complaint, arguing that it no longer owed a duty to represent Stotler once it disclaimed interest in the bargaining unit, and that even assuming such a duty existed, Stotler failed to allege facts sufficient to establish a breach of that duty.

On June 13, 2012, the ALJ sent a letter notifying Stotler that he could file a written response to the Motion on or before June 25. On June 21, Stotler filed a timely response which included additional documents in support of his claim. Teamsters filed a Reply in Support of the Motion to Dismiss on July 9, 2012.

ALJ Rader sent a second letter to Stotler on July 20, 2012, notifying him that his complaint failed to state a claim for relief, and that if he did not submit additional factual allegations or an amended complaint, ALJ Rader would recommend that the Board dismiss the complaint. Stotler provided a written response on July 30, 2012.

For purposes of this Order, we assume the facts alleged in the complaint are true when considering whether the complaint presents an issue of fact or law that warrants a hearing. *Schroeder v. State of Oregon, Department of Corrections, Oregon State Correctional Institute, and Association of Oregon Correctional Employees*, Case Nos. UP-49/50-98, 17 PECBR 907 (1999). In deciding whether to dismiss without a hearing, we may rely on undisputed facts we discover during our investigation of the complaint. *Upton v. Oregon Education Association/UniServ*, Case No. UP-58-06, 21 PECBR 867, 868 (2007); ORS 243.676(1)(b).

We have considered the complaint, the filings of all parties, and the attached exhibits. We summarize the undisputed facts as follows:

1. The Teamsters and the City were parties to a collective bargaining agreement in effect from July 1, 2007 to June 30, 2010. The Teamsters were the designated representative of all non-confidential and non-supervisory employees of the City including the following classifications: Community Services Officer; Crime Analyst; Forensic Technician; Police Officer; Police Records Specialist; Property Specialist; and Radio Technician.

2. Stotler was a Police Officer and member of the bargaining unit represented by Teamsters until he was terminated on April 5, 2011. The City terminated Stotler because it believed he violated a last chance agreement.

3. At the time of Stotler's dismissal, the contract between the City and the Teamsters had been expired for nearly a year. Nonetheless, the Teamsters filed a grievance on Stotler's behalf challenging the termination as a violation of the just cause provisions of the expired contract. The City denied the grievance at the initial steps, but agreed to arbitrate the matter. An arbitration hearing was scheduled for January 17 to 19, 2012.

4. On November 16, 2011, a Petition for Representation was filed by the Medford Police Officers Association (MPOA), seeking to represent this bargaining unit.

5. On November 28, 2011, Teamsters disclaimed any interest in the existing bargaining unit.

6. Teamsters Business Agent Brent Jensen called Stotler on December 1, 2011, and orally notified him that Teamsters was no longer able to continue its involvement in the arbitration proceeding due to the Petition filed by MPOA and the subsequent disclaimer of representation by Teamsters.

7. The City voluntarily recognized MPOA as the exclusive representative of the bargaining unit on December 7, 2011.

8. On December 9, 2011, counsel for the Teamsters informed the arbitrator that, as a result of its disclaimer of this bargaining unit, it was no longer a party in interest to the arbitration.

9. The MPOA was made aware of the Teamsters' decision and postponed the arbitration in order to review the allegations and evidence in Stotler's dismissal appeal.

10. On April 19, 2012, an agent for the Teamsters sent Stotler a letter restating its position that it was no longer able to proceed with the arbitration and suggesting that the MPOA was the proper entity to represent him. In this letter, Teamsters cited several cases decided by this Board that it believed supported its position.

11. The MPOA declined to take Stotler's dismissal appeal forward to arbitration.

DISCUSSION

When a labor organization is certified or recognized as the exclusive representative of a bargaining unit, that organization has an obligation to represent the members of the unit fairly, without hostility, and without discrimination. Failure to comply with this duty of fair representation violates ORS 243.672(2)(a), which makes it an unfair labor practice for a labor organization to "[i]ntefere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782." Stotler argues that Teamsters violated its duty of fair representation by refusing to take the arbitration of his dismissal appeal forward after its disclaimer of representation.

In cases where a complainant asserts that a labor organization violated the duty of fair representation by failing to pursue a grievance, the complainant must prove that the union's refusal is "arbitrary, discriminatory, or in bad faith." *Coan and Goar v. City of Portland, Bureau of Parks and Laborers' International Union of North America, Municipal Employees Local 483*, Case Nos. UP-23/24/25/26-86, 10 PECBR 342, 351 (1987), *recons*, 10 PECBR 438 (1988), *AWOP*, 93 Or App 780, 764 P2d 625 (1988). Unions are afforded substantial discretion in deciding whether to file or arbitrate grievances, and even a good faith but mistaken decision not to pursue a meritorious grievance is not a violation of the duty of fair representation. *Zemmer and Kirk v. American Federation of State, County and Municipal Employees and State of Oregon, Department of Corrections*, Case No. FR-01-10, 23 PECBR 886, 891-92 (2010), citing to *Chan v. Leach and Stubblefield, Clackamas Community*

College; and McKeever and Brown, Clackamas Community College, Association of Classified Employees, OEA/NEA, Case No. UP-13-05, 21 PECBR 563, 575 (2006), recons den, 21 PECBR 597 (2007). Generally, we do not substitute our judgment for that of a union that rationally decided not to process a grievance.

Stotler has not alleged any facts which, if true, would establish that Teamsters acted in bad faith or for discriminatory reasons. As a result, he must allege facts that support a finding that Teamsters acted in an arbitrary manner. A union's decision is arbitrary if it lacks a rational basis. *Grisham-Tittle v. American Federation of State, County and Municipal Employees, Local 1246-3 and State of Oregon, Department of Administrative Services, Case No. FR-03-10, 24 PECBR 228, 238 (2011).*

Teamsters informed Stotler orally on December 1, 2011, that it no longer had standing to pursue the appeal of his dismissal because it no longer served as the exclusive representative of the unit. On April 19, 2012, Teamsters sent a letter to Stotler further explaining their position. In that letter, they noted that they had consulted with legal counsel prior to making the decision and cited to several cases of this Board in support of their position, including *Teeter and Keepers v. Service Employees International Union Local 503 and State of Oregon, Oregon Health Licensing Agency, Case No. FR-04-09, 23 PECBR 831 (2010); Service Employees International Union Local 503, Oregon Public Employees Union v. State of Oregon, Judicial Department, Case No. UP-03-04, 20 PECBR 864 (2005); and Hadley, Hadley, Cordes, Burton, and McMenemy v. Multnomah County Deputy Sheriff's Association and Multnomah County, Case No. FR-01-08, 22 PECBR 416 (2008).*

Stotler has not asserted any factual allegations that contradict Teamster's assertion that it based its decision not to proceed with the arbitration upon the advice of legal counsel and its resultant reasonable belief that it had no standing or obligation under the law to proceed with the case. This belief, even if mistaken, was in good faith and did not lack a rational basis. As a result, Teamsters' decision not to proceed with the case met the deferential standards we apply in these cases.

Where a duty of fair representation complaint lacks sufficient allegations to establish that the union acted in bad faith or that the decision was arbitrary, we will dismiss the complaint without a hearing. See *Balch v. Oregon Public Employees Union, Case No. UP-6-96, 16 PECBR 478, 480 (1990)*. The facts alleged by Stotler are insufficient to state a claim against Teamsters. As a result, the complaint will be dismissed.¹

ORS 243.672(1)(g) Claim Against the City

Where a complainant alleges both a duty of fair representation claim against the union and a breach of contract claim against the employer, the complainant must establish a breach of the duty of fair representation by the union before proceeding with the contract claim against the employer. *Mengucci v. Fairview Training Center and Teamster Local 223, Case Nos.*

¹Because Stotler failed to allege facts sufficient to establish that Teamsters acted in bad faith or in an arbitrary manner, we need not address Teamsters claim that any and all duty of fair representation it owed to Stotler ended upon its disclaimer of the bargaining unit.

C-187/188-83, 6 PECBR 6722, 6734 (1984). Because we find that the Teamsters did not violate its duty of fair representation under ORS 243.672(2)(a), we do not consider whether Stotler's potential grievance against the City under ORS 243.672(1)(g) has merit. Accordingly, we also dismiss the complaint against the City.

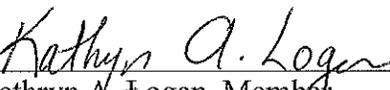
ORDER

The complaint is dismissed.

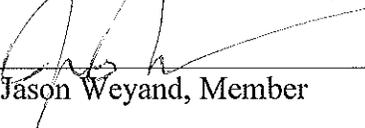
DATED this 6 day of September, 2012.



Susan Rossiter, Chair



Kathryn A. Logan, Member



Jason Weyand, Member

This Order may be appealed pursuant to ORS 183.482.