
SHARON KNAPP,)
)
 Complainant,)
)
 v.)
)
 MSEA, SEIU LOCAL 1989,)
)
 Respondent.)

DECISION AND ORDER

I. Statement of the Case

Sharon Knapp filed this prohibited practice complaint against her former union, the Maine Service Employees Association, SEIU Local 1989 (Union), alleging that the Union violated its duty of fair representation regarding its responses to her complaints about retaliation for reporting a coworker’s alleged illegal activity, the bias of investigators looking into her reports of alleged illegal activity and in the Union’s representation of her at her pretermination meeting.

The Board is sympathetic to Ms. Knapp’s situation, her desire for union protection and support during a difficult time and feeling like she was not receiving it. However, despite Ms. Knapp’s dissatisfaction with the Union’s level of assistance and representation, its conduct does not rise to the level of a breach of the Union’s duty of fair representation.

II. Procedural History

Ms. Knapp filed her prohibited practice complaint on August 16, 2023, and the Union filed its response on September 22, 2023. The Executive Director of the Board issued a sufficiency determination on October 5, 2023, and Board Chair Sheila Mayberry, Esq., conducted a prehearing conference with the parties on December 13, 2023, issuing a Prehearing Conference Memorandum and Order on December 18, 2023. The Board held an evidentiary hearing on this matter on February 6 and 8, 2024, which was presided over by Sheila Mayberry, Esq., Board Chair, Ann Freeman, Esq., Alternate Employer Representative, and Roberta de Araujo, Esq., Employee Representative. Ms. Knapp represented herself and the Union was represented by Joseph Gribbin, Esq. The parties were given a full opportunity to examine and cross-examine witnesses, introduce evidence and make their arguments. The parties were also permitted to file post-hearing briefs, which were submitted on May 31, 2024.

III. Findings of Fact

On January 13, 2023, Ms. Knapp emailed her agency's State Director regarding concerns with a coworker's work product and that illegal activity may be occurring.¹ Ms. Knapp reached out to the Union by an email sent through the Union's website on Sunday, January 15, 2023. In the email, Ms. Knapp relayed her concerns that her reporting of illegal activity by a coworker was being ignored and requested that the Union "provide support and advice" regarding the situation. She reached out again to the Union the next business day, January 17, 2023, leaving a voicemail on the Union's general inquiry line. In the voicemail, Ms. Knapp again relayed concerns that her report of illegal activity was being ignored by her employer. She also said that she had been treated poorly since her report of illegal activity, by being ridiculed for a verbal mistake and being yelled at for not keeping office supplies stocked. She also voiced concern that she may be retaliated against because of her report and requested to be represented by someone other than her current assigned Union staff representative.

A Union employee reached Ms. Knapp by phone the morning of January 17, 2023. The Union employee told Ms. Knapp that since she was already assigned to a Union representative regarding another matter, she could not assign a different staff representative to her, but that she could either talk to his supervisor or give Ms. Knapp a list of Union stewards that could provide assistance. By the end of the call, Ms. Knapp decided to continue being represented by her current Union staff representative and said she would reach out to him. The Union employee also forwarded Ms. Knapp's voicemail to Ms. Knapp's assigned Union staff representative, who replied to the employee that he was in contact with Ms. Knapp: "I am working with her to look into reasonable accommodations as well as monitoring the situation on the complaints she filed."

Soon after, the Union staff representative conferred with his supervisor about a potential conflict of interest with his representation of Ms. Knapp in the matter of Ms. Knapp's complaint of illegal activity as he was already representing the other employee at the heart of Ms. Knapp's complaint. The decision was made to transfer Ms. Knapp's representation to a long-term Union steward, a decision that the Union subsequently conveyed to Ms. Knapp. On January 24, 2023, Ms. Knapp reached out to the Union staff representative conveying anxiety about not having heard anything from management regarding her complaint of illegal activity. The Union staff representative replied, "No news is good news." Ms. Knapp's newly assigned Union steward emailed Knapp the next day introducing herself and asking Ms. Knapp to give her a call so that they could connect regarding her concerns.

On February 16, 2023, in an email to the Union staff representative and the Union steward, Ms. Knapp forwarded emails between her and her supervisor regarding Knapp's request for an accommodation to work from home on the day that she was scheduled to meet with investigators regarding the complaint she had filed, with the following message:

Hello,

I'm sending you the email from [supervisor's name] criticizing my work and my response to it that I probably should have cooled off before sending. I don't know if [sic] you guys even want me to send this stuff but I'm just not sleeping and not thinking clearly and don't know if it matters for the meeting with the

investigators. Thank you both for all your support! See you tomorrow morning, [Union steward's name]!

The email Ms. Knapp forwarded from the Supervisor was as follows:

Due to the uniqueness of the situation, I will allow you to work from home tomorrow. The interview process is very uncommon for our staff, so I feel this is a reasonable request. Regarding your work, I do have a couple of thoughts. First, taking an average of 24 minutes to get a progress note out (20 in an 8 hour day) seems like a lot. I would estimate this should take 5-10 minutes. Perhaps you are factoring in interruptions (in-person, email, teams, etc., etc.). Let's address that another day to see if I can help you streamline the process. I would also like to give you the opportunity to catch up on any backlog of work that you have before adding new things. [A coworker's name] was gracious enough to step in to help out while you were out. Documents sent to you after January 1st were likely re-sent to [a coworker's name] at the request of [a coworker's name] and me. If we continue with [a coworker's name] helping with the new documents, you would be able to take care [sic] any backlog prior to January 1st in your emails as well as the filing you were working on prior to being out. Then you could start fresh when caught up. Do you think it would be helpful to chat further about this?

In early February, 2023, Ms. Knapp received a letter from the State Director of her agency, confirming receipt of her report and notifying her that an investigation was being launched into the matter. On February 17, 2023, Ms. Knapp, accompanied by the Union steward, met with the two assigned investigators regarding her complaint. It appeared to Ms. Knapp that the investigators had not reviewed her complaint or accompanying documents prior to the meeting. In response to the investigators' questions about the details of her claims, Ms. Knapp became distraught. At one point the Union steward suggested Ms. Knapp step away from the meeting to gather her composure. The meeting ended shortly thereafter. Ms. Knapp emailed the Union steward the next day, a Saturday, with comments and questions about the meeting with the investigators. The next business day, the Union steward emailed a detailed response to Ms. Knapp and offered to discuss the matter further with her by phone. The second meeting with the investigators was rescheduled for February 21, 2023, but ultimately never happened because Ms. Knapp went out on medical leave starting February 20, 2023.

On May 10, 2023, Ms. Knapp reached out to the Union by email requesting information about options for assistance to help her financially while she was out on medical leave. A Union staff member provided the phone number to a staff member who could provide more information on the Union's short-term disability insurance plan but noted that it was likely too late to help Ms. Knapp with her current trouble. Ms. Knapp expressed her dissatisfaction with the Union in a reply email, and the staff member in turn notified Ms. Knapp that she would escalate her concerns to her supervisor. That same day, the Union President emailed Ms. Knapp that he would look into her concerns. Ms. Knapp followed up on May 12, 2023, with a lengthy email to the Union President providing more background information about her work issues and experience with the Union, to which he acknowledged receipt that same day. On May 22, 2023, the Union President emailed Ms. Knapp, expressing sympathy that she felt her concerns had not been met by the Union staff representative and encouraging her to continue working with the Union steward who would in turn be in contact with Union headquarters as needed. He also invited Ms. Knapp to reach out to him and another Union staff member if she had any further concerns.

Ms. Knapp received a letter from management on May 30, 2023, proposing her termination based on her being unable to perform the essential functions of her employment, due to her extended absence for medical reasons. The letter stated that despite multiple requests and reminders for Ms. Knapp to complete the paperwork required for the agency to further accommodate her medical restrictions that she had not done so. The letter also notified Ms. Knapp of her pretermination meeting scheduled for June 8, 2023. In response, on June 3, 2023, Ms. Knapp sent a Department of Education official, who would be present at the meeting, a two-page email with an additional 24 pages of attached documentation. Ms. Knapp notified the Union steward of the meeting on June 6, 2023,² two days prior to the meeting, and provided the email and documentation that she had sent the Department of Education official. Ms. Knapp also offered to answer any questions or receive any suggestions the steward had. The steward promptly replied to Ms. Knapp, “You are on my calendar.”

In the evening of that same day, Ms. Knapp reached out to her employer, the Department of Education official and the Union steward by email in an attempt to reschedule the pretermination meeting for medical reasons. The employer notified Ms. Knapp by email the next day that the meeting would proceed regardless and that the Union steward could present information on her behalf. The Union steward notified the group that she would still be in attendance.

The pretermination meeting proceeded on June 8, 2023, with the Union steward present on behalf of Ms. Knapp. After the meeting, Ms. Knapp reached out to the Union steward asking when she should expect to hear about the meeting, to which the steward replied, thinking she was referring to the outcome of the meeting, that it would be a question for management or the Department of Education official. Ms. Knapp took this to mean that the steward had not attended the meeting, and she shortly thereafter emailed the Union President requesting more information. The Union President replied to Ms. Knapp that he would forward her concerns to another Union representative who would follow up. On the morning of the next day, June 9, 2023, the Union steward sent Ms. Knapp an email confirming her attendance at the meeting and describing the questions she had asked during the meeting and the answers she had received. She also invited Ms. Knapp to call her that day if she wanted to discuss the meeting further.

Ms. Knapp did not call the steward, but instead, on June 13, 2023, emailed the steward, Union President, Union Vice President and another Union staff member. The email contained multiple criticisms of the steward’s representation at the pretermination meeting, particularly faulting her for not being more proactive in reaching out to Ms. Knapp prior to the meeting. The email also contained complaints about the Union’s failure to file grievances regarding Ms. Knapp’s report of illegal activity and the alleged retaliation from her supervisor. In the email Ms. Knapp characterized the perceived shortcomings of the Union as being intentional and motivated by her prior criticisms of the Union. Later that same day, the Union President connected Ms. Knapp with a Union staff attorney by email, telling Ms. Knapp that the attorney would help her going forward.³

IV. Analysis

At all times relevant, the Union was a bargaining agent within the meaning of 26 M.R.S.A. § 962(2) and Ms. Knapp was a public employee within the meaning of 26 M.R.S.A. § 962(6). The Board's jurisdiction to hear this case and to issue a decision and order derives from 26 M.R.S.A. § 968(5).

The Municipal Public Employees Labor Relations Law, 26 M.R.S.A. § 961, et seq. (Act)⁴, provides that a bargaining agent owes a duty of fair representation to all bargaining unit employees, and a violation of this duty is a prohibited practice under the Act. 26 M.R.S. §§ 967(2), 964(2)(A); *James Escoto v. AFSCME Council 93, Local 431*, No. [23-PPC-10](#), slip op. at 4 (August 31, 2023). A bargaining agent breaches its duty of fair representation, and thus violates the Act, when its conduct towards a bargaining unit member can be considered arbitrary, discriminatory or in bad faith. *Escoto*, No. [23-PPC-10](#), slip op. at 4. 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." *Id.* Instances of mere negligence, poor judgment or ineptitude are insufficient to establish arbitrary conduct that would violate the duty of fair representation. *Id.*, citing *Macomber v. Maine State Employees Ass'n*, No. 18-20, slip op. at 7, aff'd No. AP-18-67 (Me. Super. Ct., Ken. Cty., October 1, 2019). A union may refuse to process a grievance, provided it has a good faith reason to do so. *Escoto*, No. [23-PPC-10](#), slip op. at 5, citing *Lundrigan v. MSEA*, No. [83-03](#), slip op. at 6-7; aff'd sub nom. *Lundrigan v. Maine Labor Relations Board*, No. [CV-83-81](#) (Me. Super. Ct., Ken. Cty., July 25, 1983), aff'd, [482 A.2d 834](#) (Me. 1984). However, a union may not ignore a meritorious grievance or process it in a perfunctory manner. *Escoto*, No. [23-PPC-10](#), slip op. at 4-5, citing *Brown v. MSEA*, [1997 ME 24](#), ¶ 7. A union's conduct is discriminatory if it involves "invidious" discrimination, for example racially motivated conduct, conduct motivated by intraunion politics or conduct motivated by the fact that the employee is not a union member. *Escoto*, No. [23-PPC-10](#), slip op. at 4. A union acts in bad faith when its conduct involves "fraud, or deceitful or dishonest action." *Id.* The Board's review of a union's conduct with respect to its duty of fair representation is "highly deferential". *Id.*, citing *Langley v. Maine State Employees Association, Local 1989, SEIU*, No. [00-14](#), slip op. at 28 (December 26, 2000) (quoting *Airline Pilots v. O'Neill*, 499 U.S. 65, 78 (1991)).

A. Union Failure to File Grievance Regarding Allegations of Supervisory Retaliation

Ms. Knapp claims the Union violated its duty of fair representation in part by not filing a grievance based on her complaints to the Union of alleged retaliation by her employer in response to Ms. Knapp's reporting allegedly illegal activity by a coworker to the agency's State Director and the Attorney General's Office. The record shows Ms. Knapp apprising the Union of the first instances of this alleged retaliation in her January 17, 2023, voicemail, when she reported being ridiculed for a verbal mistake and being yelled at for not keeping office supplies stocked. The next instance of alleged retaliation was the email from her supervisor that she forwarded to the Union staff representative and Union steward on February 16, 2023.

Ms. Knapp never appears to have requested a grievance be filed for these instances of alleged retaliation. Even if one were to conclude that Ms. Knapp had a meritorious grievance and that the Union should have pursued a grievance on Ms. Knapp's behalf, the Union's failure to do so is at worst negligent, and certainly not so irrational as to constitute arbitrary treatment. She approached the Union on this issue originally for "advice and support," and out of concern for potential future retaliation. The Union could reasonably have determined that the instances of poor workplace treatment cited by Ms. Knapp were too slight or amorphous to constitute a meritorious grievance. The Union staff representative and Union steward testified to not finding any fault in the allegedly critical email sent by Ms. Knapp's supervisor, and their failure to pursue a grievance in response is not unreasonable given the email at issue.

There is also no compelling evidence that the Union discriminated against Ms. Knapp or otherwise acted in bad faith when it did not file a grievance regarding the alleged retaliation. Ms. Knapp seems to attribute retaliatory intent to the Union's inaction, based on her request to be represented by someone other than the Union staff representative assigned to her, or her complaints about the Union, or both. The record does not support this theory. There is insufficient evidence to infer any intentional failure by the Union to file a meritorious grievance. Additionally, despite Ms. Knapp's suspicions, there is no evidence of anything improper in the transfer of Ms. Knapp's representation from the Union staff representative to the Union steward, which appears to have been done for valid conflict of interest reasons and in accordance with standard Union procedure, and there is no evidence that the move significantly prejudiced her representation.

The record is not completely devoid of evidence of retaliation against Ms. Knapp by her employer, and perhaps the Union could have done more to address her concerns. However, the Union's conduct in this regard does not rise to the level of arbitrariness, discrimination or bad faith that would violate its duty of fair representation.

B. Union Failure to File Grievance Regarding Allegations of Investigator Bias

Ms. Knapp also claims the Union violated its duty of fair representation by failing to file a grievance regarding the bias of the two investigators who interviewed Ms. Knapp about her claims of a coworker's alleged illegal activity. The theory of bias seems to be based on the agency's State Director having a close personal friendship with Ms. Knapp's supervisor and therefore assigning investigators disinclined to find wrongdoing. Although Ms. Knapp states that both the Union staff representative and Union steward had similar suspicions, the Union steward testified to not being aware of or observing any evidence of bias during the course of the meeting. Ms. Knapp apparently felt attacked by the investigators' questions, and perhaps that fed into her belief of bias. The investigators' conduct, which Ms. Knapp interpreted as indicating they were not prepared for the meeting, likely also played into this belief. However, there is nothing in the record to demonstrate that Ms. Knapp's allegations of bias were based on anything other than speculation. There is also no evidence that Ms. Knapp approached the Union requesting action regarding the alleged bias. Under the circumstances, even assuming that such a grievance could be considered meritorious, it was not irrational for the Union not to proceed with filing a grievance. Neither is there sufficient evidence that the Union acted discriminatorily or in bad

faith in not pursuing a grievance regarding investigator bias. As discussed above, the theory that the Union's inaction was retaliatory is not supported by the record. Accordingly, Ms. Knapp has not proven that the Union violated its duty of fair representation by not filing a grievance regarding alleged investigator bias.

C. Union Representation at Pretermination Meeting

Ms. Knapp's final claim is that the Union violated its duty of fair representation in its representation of her at her pretermination meeting. While the quality of representation Ms. Knapp received from the Union steward may not have been to her liking, this is not the legal standard. See *Escoto*, No. [23-PPC-10](#), slip op. at 5 ("Generally, a Union that actively represents an employee, even if not to the employee's satisfaction, does not violate its duty of fair representation."). It appears that the Union steward provided a reasonable level of representation under the circumstances. She was given very short notice of the meeting, and an insufficient amount of time to review Ms. Knapp's email containing voluminous documents only 2 days prior to the meeting. And although the Union steward did not call Ms. Knapp prior to the meeting to go over the documentation with her or strategize with her, the steward did attend the pretermination meeting and actively advocated on behalf of Ms. Knapp based on the information she had received. Notably, Ms. Knapp was not present at the meeting to assist the steward. The evidence supports that the steward did the best that she could with the information she had at the time. The Union steward's approach to the representation was by no means perfunctory or irrational, as reflected in the description of her questions and the employer's answers at the pretermination meeting. The steward was also relatively prompt in relaying that information to Ms. Knapp by email. Additionally, there is no compelling evidence by which to infer that the Union steward had any bad motive when undertaking Ms. Knapp's representation. As such, the Union's representation of Ms. Knapp at her pretermination meeting can not be said to have been arbitrary, discriminatory or done in bad faith, and therefore Ms. Knapp has not established that the Union violated its duty of fair representation in this respect.

V. Conclusion

Even if the Union could have handled some aspects of this matter differently, its conduct does not rise to the level of a violation of law. The record presents no compelling evidence to infer discriminatory intent or bad faith on behalf of the Union, and its alleged shortcomings do not rise to the level of arbitrariness required to prove a violation of the duty of fair representation. The record shows the Union being prompt in its responses to Ms. Knapp's many communications and providing her with a reasonable level of assistance.

VI. Order

On the basis of the foregoing discussion, and by virtue of and pursuant to the powers granted to the Maine Labor Relations Board by 26 M.R.S.A. § 968(5), it is ORDERED that the complaint in Case No. 24-PPC-02 be, and hereby is, DISMISSED.

Dated this day, July 1, 2024.

MAINE LABOR RELATIONS BOARD

/s/ _____
Sheila Mayberry, Esq.
Board Chair

/s/ _____
Ann Freeman, Esq.
Employer Representative

/s/ _____
Roberta de Araujo, Esq.
Employee Representative

The parties are advised of their right pursuant to 26 MR.S.A. § 968(5) to seek a review of this decision and order by the Superior Court. To initiate such a review, an appealing party must file a complaint with the Superior Court within fifteen (15) days of the date of issuance of this decision and order, and otherwise comply with the requirements of Rule 80(C) of the Rules of Civil Procedure.

¹ Around this same time Ms. Knapp had also reached out to an Assistant Attorney General concerning these issues. She contacted the Attorney General's Office again by email on March 1, 2023.

² In the email, Ms. Knapp references that the steward had been included on an earlier videoconference invitation to the meeting from management, though it is unclear when the videoconference message was sent or whether the steward received it.

³ Although not relevant to the present case and not a basis for the Board's decision, it is worth noting that the assigned Union staff attorney was in close communication with Ms. Knapp, filed a grievance challenging her termination and ultimately secured a settlement agreement with the employer that included financial remuneration, to which Ms. Knapp agreed.

⁴ In the statutes establishing Ms. Knapp's former agency, Child Development Services, there is reference at 20-A M.R.S.A. § 7209(2)(B-1) to collective bargaining under the Municipal Public Employees Labor Relations Act. Accordingly, this is the applicable statutory scheme.